

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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QUICKIE, LLC,

Plaintiff,

07 Civ. 10331 (RMB) (DFE)

-against-

GREENBERG TRAURIG, LLP, THELEN  
REID BROWN RAYSMAN & STEINER, LLP  
(f/k/a THELEN, REID & PRIEST LLP) and  
ROBERT E. KREBS,

**ECF CASE**

Defendants.

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**QUICKIE, LLC'S RESPONSE TO GREENBERG  
TRAURIG, LLP'S MOTION FOR SUMMARY JUDGMENT**

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August 26, 2008

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Quickie, LLC ("Quickie") responds to Greenberg Traurig, LLP's ("GT") Motion for Summary Judgment (the "GT Motion") as follows:

**PRELIMINARY STATEMENT**

1. At its heart, this litigation presents one central fact issue for the jury, namely:

**Was GT Quickie's attorney as to the '160 Patent  
when maintenance fees were due on May 23, 2004?**

To answer that question under New York substantive law, the jury will be asked to examine GT's and Quickie's words and actions to determine whether GT either: (a) affirmatively led Quickie to believe that it was acting as Quickie's attorney, or (b) knowingly allowed Quickie to proceed under that misconception. As discussed below, there is substantial evidence from which the jury could answer that question in Quickie's favor. For example:

- Months after Mr. Sharinn claims he was terminated, he told the United States Patent and Trademark Office and Quickie that he was Quickie's agent for receipt of all correspondence and reminders related to maintenance fees on the '160 Patent [Resp. Ex. M; Resp. Ex. U, p. 135, line 7 – p. 143, line 19];
- When the '160 Patent maintenance fees were due, GT and Mr. Sharinn were still on record at the PTO as Quickie's agents for receipt of all maintenance fee related correspondence. [Resp. Ex. M];
- GT cannot point to a single document showing that GT transferred client/matter number "51822.010700" (the matter in which it billed Quickie for monitoring maintenance fee deadlines) to Thelen. Resp. Ex. U, p. 228, line 19 - p. 229, line 23];
- Mr. Sharinn admits that he sent Quickie bills for work that was not actually performed, that he relied entirely on his assistant to ensure that his time was billed to the correct Quickie matter number, that GT's bills to Quickie were "very confusing," and that he did not pay close attention to them other than to see that the fees were reasonable and that they were being paid; [Resp. Ex. U, p. 113, line 13 – p. 115, line 6; p. 227, line 10 – p. 288, line 18; p. 268, line 3 – p. 269, line 25];



- GT and Mr. Sharinn continued to bill Quickie for work related to the '160 Patent and other intellectual property even after Mr. Sharinn claims that GT had been discharged for all engagements [Resp. Ex. U, p. 221, line 13 - p. 226, line 21];
- Even after Mr. Sharinn claims to have been discharged, he continued to provide advice and counsel to Quickie concerning the Medtronic litigation, the Reexamination Proceedings, and other Quickie matters [Resp. Ex. U, p. 105, line 18 - p. 110, line 11]; and
- Even though GT knew that Quickie was relying on it to monitor the maintenance fee deadlines, GT never told Quickie - in writing or orally - that it removed the '160 Patent maintenance fee deadlines from its internal calendaring systems; nor did Mr. Sharinn communicate the deadlines to Quickie or Thelen at the time he was allegedly terminated. [Fell Declaration, ¶ 7; Galloway Declaration ¶¶ 5-6, 10-13; Evens Declaration, ¶¶ 9 - 10; Resp. Ex. U, p. 187, line 6 - p. 189, line 22].

GT argues that this evidence should be either ignored or viewed in a light most favorable to GT, in an effort to obtain summary judgment on what, at base, is an inherently factually-intensive and hotly disputed material issue at the heart of this litigation.

2. Not only does GT ask the Court to entirely ignore significant parts of the evidentiary record, it also asks the Court to ignore inconsistencies in the admissible evidence GT does cite. For example, GT asks the Court to disregard what it refers to as "aberrant examples" of sloppy file transfer letters where Mr. Sharinn expressly referred to specific matters, to the exclusion of what they now claim was transferred to Thelen. [GT Motion, p. 20, n. 13.] Indeed, GT even asks the Court to ignore the inconsistent testimony between *GT's own witnesses* on the topic of when they were allegedly discharged by Quickie: Mr. Sutton argues that GT's responsibility for maintenance fees on the '160 Patent was discharged by the March 2003 Reexamination Power of Attorney [Sutton Declaration, ¶ 89], but Mr. Sharinn maintains that the power of attorney was a mere "formality" and that GT had been terminated months earlier. [Resp. Ex. U, p. 153, line 5 - p. 154, line 2]. GT further asks the Court to rely on Mr. Sutton's

outright speculation as to Quickie's and Thelen's intentions, and to accept as hard fact Mr. Sutton's recounting and interpretation of conversations *for which he was not even a participant*. See, e.g., Sutton Declaration, ¶¶ 55, 56, 62, 66, 70, 80, 98, 103, 122, 123, 124, 128, 129, 130, and 135.<sup>1</sup>

3. Although GT spends two-third of its motion presenting a selective sampling of the "evidence" to argue that no jury could find in Quickie's favor, it fails to cite a single case supporting its request that the Court consider facially inadmissible evidence, weigh that evidence, make credibility judgments, and resolve ambiguities in its favor to reach the desired summary judgment result. In fact, GT *cannot* cite such a case for the simple reason that such cases do not exist - black-letter law holds that a Court is not required to consider inadmissible evidence, weigh the admissible evidence and make credibility assessments to resolve a Rule 56 motion for summary judgment. Instead, the Court is only required to review all of the admissible evidence and determine whether a reasonable jury could determine that GT was in fact Quickie's attorney for the '160 Patent as of the May 23, 2004 maintenance fee due date.

4. As discussed below, a full review of the admissible evidence presents more than enough facts from which a reasonable jury could find that GT was in fact *not* discharged in October 2002, March 2003, or whatever other date GT maintains the discharge allegedly occurred. For that reason, GT has failed to sustain its summary judgment burden, and Quickie thus respectfully asks the Court to deny the GT Motion in its entirety.

#### **SUMMARY JUDGMENT STANDARD**

5. GT makes two broad summary judgment arguments: (1) GT had been fired as Quickie's attorneys prior to the maintenance fees becoming due, and thus there was no

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<sup>1</sup> Concurrently herewith, Quickie is also filing its Motion to Strike Inadmissible Summary Judgment Evidence.

negligence, there is no proximate cause, and the statute of limitations on Quickie's claims has expired; and (2) Quickie's negligent misrepresentation claim should be dismissed because it is duplicative of the legal malpractice claims. To be entitled to summary judgment, GT must "demonstrate that no genuine issue respecting any material fact exists" as to one or more elements of Quickie's claims. *Harris v. Provident Life and Accident Ins Co.*, 310 F.3d 73, 79 (2<sup>nd</sup> Cir. 2002). A genuine issue of material fact exists if the evidence is such that a reasonable jury could find that GT did in fact continue to represent Quickie when the maintenance fees became due. *Diamond v. Sokol*, 468 F.Supp. 626, 632 (S.D.N.Y. 2006). In reviewing the summary judgment evidence, all ambiguities and reasonable references must be resolved in the light most favorable to Quickie, and the Court is not to make any credibility assessments or weigh the evidence. *Id.*

### **STATEMENT OF FACTS**

6. In May 1998, Quickie retained Todd Sharinn and the law firm in which he was employed, Pepe Hazard LLP ("PH"), to pursue a patent application for a device known as the "Passive Knotless Suture Terminator for use in Minimally Invasive Surgery and to Facilitate Standard Tissue Securing" for use in heart surgeries (the "Quickie Device"). [Galloway Declaration, ¶ 3; Fell Declaration, ¶ 3]. Mr. Sharinn was the PH attorney-in-charge of the Quickie representation, and he filed the Quickie Device patent application with the PTO on November 23, 1998. [Galloway Declaration, ¶ 3].

7. On May 23, 2000, the PTO issued U.S. Patent No. 6,066,160 covering the Quickie Device (the "160 Patent"). [Galloway Declaration, ¶ 4; Fell Declaration, ¶ 5]. On May 30, 2000, Sharinn wrote to inform Quickie that the '160 Patent had been granted, and stated that

he and PH would monitor the deadlines to pay maintenance fees on the '160 Patent and notify Quickie prior to those fees becoming due:

Please note that the United States Patent and Trademark Office requires the payment of fees for maintaining patents issuing from patent applications filed in the United States on or after December 12, 1980 . . . . The fees are due on or before 3 ½, 7 ½, and 11 ½ years from the date the patent issues. Failure to pay the fees will result in loss of the patent. We will notify you regarding payment of the maintenance fees several months before they are due.

[Fell Declaration, ¶ 5].

8. When Mr. Sharinn left PH and joined GT in May 2001, Quickie and Mr. Sharinn agreed that he would continue as Quickie's patent attorney. [Resp. Ex. U, p. 54, line 2 – p. 56, line 24]. Thus, Mr. Alan Fell, a member of Quickie as well as Quickie's general outside counsel, instructed PH to transfer all of Quickie's files to Mr. Sharinn at GT. [Fell Declaration, ¶ 6]. Shortly thereafter, GT completed a client matter intake memorandum for use in GT's accounting and conflicts systems, and Quickie was assigned client number "51822." [Resp. Ex. U, p. 110, line 22 - p. 111, line 10; Resp. Ex. T, p. 221, line 14 - p. 223, line 10]. GT's patent docketing clerks also entered the '160 Patent maintenance fee deadlines into GT's internal calendaring systems under the GT client/matter number "51822.010700." [Resp. Ex. U, p. 148, line 19 - p. 151, line 25; Resp. Ex. T, p. 69, line 3 – p. 71, line. 4].

9. When Quickie learned that Medtronic, Inc. was marketing a product that infringed on the '160 Patent, its engagement with GT was expanded to include the investigation and pursuit of patent infringement claims against Medtronic and possibly others. [Galloway Declaration, ¶ 7; Fell Declaration, ¶ 8]. In that regard, GT opened a new client/matter for the Medtronic Litigation, designated as "51822.010400." [Resp. Ex. U, p. 123, line 17 - p. 124, line 16]. At that time, however, Mr. Sharinn was not yet a partner at GT and he felt uncomfortable taking on

a case of that magnitude, so he asked Paul Sutton, GT's Senior Chair for Intellectual Property and Technology, to provide senior supervision on the litigation. [Resp. Ex. U, p. 161, lines 3 - 24].

10. Messrs. Sharinn and Sutton were initially responsive to Quickie's needs, but Mr. Sutton failed to appear for the Markman hearing on September 4, 2002, leaving Mr. Sharinn to handle that critical hearing himself. [Fell Declaration, ¶ 9; Galloway Declaration, ¶ 8; Evens Declaration, ¶ 3]. Judge Lynch eventually issued a very favorable Markman hearing, but Mr. Sutton's failure to appear for the hearing, despite having billed Quickie for time preparing for the hearing, caused Quickie to be concerned about GT's handling of a significant piece of litigation. [Galloway Declaration, ¶ 8; Fell Declaration, ¶ 9; Evens Declaration, ¶ 3].

11. Shortly after the Markman hearing, Quickie therefore decided to transfer the Medtronic litigation to Thelen, Reid & Priest LLP ("Thelen") and Mr. Mark Evens who was not only an experienced patent litigator, but was also someone familiar as the brother-in-law of Dr. Stephen Colvin, one of Quickie's founding members. [Galloway Declaration, ¶ 9; Fell Declaration, ¶ 9; Evens Declaration, ¶ 3]. Mr. Fell informed Mr. Sharinn of Quickie's decision in a telephone call in early October 2002. [Fell Declaration, ¶ 9; Resp. Ex. U, p. 96, line 15 – p. 97, line 21]. In that conversation, Mr. Fell asked Mr. Sharinn to transfer the Medtronic Litigation file to Thelen, but stated that Quickie wanted Mr. Sharinn and GT to continue to act as Quickie's patent counsel for all other aspects of the ' 160 Patent. [Fell Declaration, ¶ 10]. Mr. Fell confirmed those instructions in a letter to Mr. Sharinn dated October 15, 2002, in which he stated that while Thelen was being substituted for GT in connection with the Medtronic Litigation, Mr. Sharinn and GT would continue to handle various other patent applications on Quickie's behalf. [Fell Declaration, ¶¶ 10 - 11].

12. Consistent with Mr. Fell's instructions, on October 16, 2002, GT sent the Medtronic litigation files to Thelen with a cover letter referencing client/matter number 51822.010400 (the Medtronic Litigation matter number), not 51822.010700 (the '160 Patent matter number). [Krebs Declaration, ¶¶ 3 - 4; Evens Declaration, ¶¶ 4 - 8; Resp. Ex. U, p. 195, line 4 - p. 196, line 2]. Thereafter, Mr. Sharinn and GT continued to bill Quickie for work related to the '160 Patent (client/matter 51822.010700), thus indicating their acknowledgement that GT continued to be engaged as Quickie's attorney with respect to all aspects of the '160 Patent other than the Medtronic Litigation. [Galloway Declaration, ¶ 10; Fell Declaration, ¶ 11; Resp. Ex. U, p. 221, line 13 - p. 226, line 21]. GT further acknowledged its continuing responsibility for the '160 Patent when, on December 16, 2002, Mr. Sharinn instructed the PTO to deliver all maintenance fee-related correspondence concerning the '160 Patent to Mr. Sharinn at his GT office located at 200 Park Avenue, New York, New York. [Resp. Ex. F; Resp. Ex. U, p. 135, line 5 -p 143, line 19; Fell Declaration, ¶ 11; Galloway Declaration, ¶ 10; Krebs Declaration, ¶ 4; Evens Declaration, ¶ 8].

13. In late 2003, Medtronic commenced reexamination proceedings before the PTO in an effort to limit the scope of the '160 Patent so that Medtronic would no longer infringe on the '160 Patent (the "Reexamination Proceedings") [Fell Declaration, ¶ 12; Galloway Declaration, ¶ 7; Evens Declaration, ¶ 11]. Mr. Sharinn initially hoped that Quickie would hire him to handle the Reexamination Proceedings, so he opened a new GT client/matter number "51822.010900" for the Reexamination Proceedings. [Resp. Ex. U, p. 132, line 8 - p. 134, line 3; GT Motion, p. 20].

14. Because the Reexamination Proceedings were an off-shoot of the Medtronic Litigation, Quickie decided instead that it would be more appropriate and cost-effective for

Thelen to handle those matters. [Galloway Declaration, ¶ 11; Fell Declaration, ¶ 12; Evens Declaration, ¶ 11]. Quickie and Thelen thus expanded their engagement to include the Reexamination Proceedings, and Thelen prepared and asked Quickie to execute a power of attorney (the "Reexamination Power of Attorney") to permit Thelen to represent Quickie before the PTO in connection with those Proceedings. [Galloway Declaration, ¶ 11; Fell Declaration, ¶ 12; Evens Declaration, ¶ 12; Krebs Declaration, ¶¶ 6-8].

15. On March 17, 2003, Thelen filed the Reexamination Power of Attorney in the Reexamination Proceedings, *not* in the PTO's primary '160 Patent file. [Krebs Declaration, ¶¶ 6 - 8]. The Reexamination Power of Attorney prominently refers to Control No. 90/006,460, which is the number the PTO assigned to the Reexamination Proceedings. [Krebs Declaration, ¶ 8]. Mr. Krebs testifies, and Mr. Evens confirms, that the Reexamination Power of Attorney in no way indicated Thelen's acceptance of GT's responsibility for monitoring maintenance fee deadlines on the '160 Patent. [Krebs Declaration, ¶ 7; Evens Declaration, ¶¶ 12-15]. In fact, the Reexamination Power of Attorney does not even appear in the file history for the '160 Patent application. [Krebs Declaration, ¶ 8]. Likewise, when Dr. Galloway executed the Reexamination Power of Attorney, he understood that Quickie was only authorizing Thelen to represent it in connection with the Reexamination Proceedings. [Galloway Declaration, ¶¶ 11-13].

16. When Thelen filed the Reexamination Power of Attorney, Mr. Sharinn and GT were still on record at the PTO as the designated recipients of all communications concerning maintenance fees on the '160 Patent. [Krebs Declaration, ¶ 7; Resp. Ex. M; Resp. Ex. U, p. 135, line 5 - p. 143, line 19]. Moreover, pursuant to Mr. Sharinn's communications with Mr. Fell in October 2002, and as demonstrated by Mr. Sharinn's delivery of the Fee Address Notice to Quickie, GT was aware that Quickie was still relying on it to monitor and provide notice of the



maintenance fee deadlines. [Fell Declaration, ¶¶ 13 – 15; Krebs Declaration, ¶ 7; Resp Ex. U, p. 135, line 5 - p. 143, line 19]. Indeed, Mr. Sharinn and GT continued to represent Quickie concerning a wide range of intellectual property matters at that time, so it was entirely appropriate for Quickie to expect to be specifically told by GT that it should no longer rely on GT to monitor the '160 Patent. [Fell Declaration, ¶¶ 10-15].

17. Mr. Sharinn was surprised that Quickie decided to hire Thelen, rather than GT, to handle the Reexamination Proceedings. [Resp. Ex. U, p. 243, line 4 - p. 244, line 18; Mov. Ex. AF]. He expressed that surprise in a letter to Mr. Fell dated May 19, 2003, stating that he received notice that the Reexamination Power of Attorney had been "filed in connection with the above-referenced re-examination application" and that, "while we are surprised to have received this document in view of the conversations I had with Dr. Colvin, we respect his decision and will take no further action in this matter." [Resp. Ex. U, p. 243, line 4 - p. 244, line 18; Mov. Ex. AF]. The matter Mr. Sharinn referred to, GT client/matter number 51822.010900 (the Reexamination Proceedings number) is prominently set forth in the "Re:" line of the correspondence.<sup>2</sup> [Mov. Ex. AF]

18. Mr. Sharinn's correspondence referenced only the Reexamination Proceedings, and said nothing about GT client/matter numbers 51822.010100 (the matter GT opened for work related to the Quickie Device), 51822.010400 (the GT matter for the Medtronic litigation), or

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<sup>2</sup> GT asks the Court to disregard this and other "aberrant examples" of GT's failure to clearly state that it was transferring the matters it now claims were transferred. [GT Motion, p. 20, n. 13.] Instead, GT asks the Court to find, as a matter of law, that "the parties simply did not pay strict attention to such matters" and that they are "not worthy of significance." *Id.* In other words, GT not only asks the Court to find an ambiguity in a patently unambiguous document, but to then compound the error by resolving that ambiguity, and drawing all reasonable references, in favor of GT, not Quickie as required by applicable law. *Diamond v. Sokol*, 468 F.Supp. at 632.



51822.010700 (the matter under which GT calendared the maintenance fee deadlines).<sup>3</sup> [Mov. Ex. AF]. Moreover, Mr. Sharinn's correspondence says *absolutely nothing* about the fact that GT had also decided at that time to stop monitoring the '160 Patent maintenance fee deadlines. [Mov. Ex. AF]. Equally important, there is not a single piece of evidence - a letter, a document, a conversation, an email, or otherwise - remotely suggesting that GT *ever* informed Quickie that it was going to stop monitoring the maintenance fee deadlines, and Mr. Sharinn testified that he "wouldn't even begin to guess" whether any such documents exist because "it's just not something that I would even think about." [Resp. Ex. U, p. 228, line 19 - p. 229, line 23]. Instead, Mr. Sharinn and GT silently stood by as the '160 Patent expired despite the fact that they continued to represent Quickie's intellectual property interests at the time. They even went so far as to remind Quickie to pay the maintenance fees on another patent *at the same time* that the '160 Patent was expiring, yet they never said a word to Quickie about their unilateral decision to remove the '160 Patent from GT's calendaring systems. [Evens Declaration, ¶ 16, Resp. Ex. U]. Mr. Fell thus had no reason to suspect that Mr. Sharinn intended the reference in his May 19, 2003, correspondence to "this matter" to actually refer to all Quickie matters. [Fell Declaration, ¶¶ 13 - 15; Galloway Declaration, ¶ 12].

19. Despite the fact that Quickie had paid GT thousands of dollars to monitor and protect the '160 Patent, and that Quickie was continuing to pay GT to protect other patents, Quickie did not learn of the '160 Patent's expiration until St. Jude Medical, a large medical device company, pulled out of negotiations to license the '160 Patent from Quickie. [Galloway Declaration, ¶ 14]. Shortly thereafter, Quickie hired Timothy Maier of the law firm, Maier & Maier LLC, to petition the PTO to reinstate the '160 Patent. [Galloway Declaration, ¶ 14]. Mr.

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<sup>3</sup> For the record, GT did not reveal its unilateral decision to stop monitoring those deadlines until it was forced to do so during discovery in this litigation.

Maier asked Dr. Galloway, Quickie's managing member, to execute a declaration describing Quickie's efforts to ensure that maintenance fees on the '160 Patent were monitored and paid. [Galloway Declaration, ¶ 15]. Because of Dr. Galloway's surgery schedule and the urgent need to file Quickie's reinstatement application, he asked his staff to place his signature on the declaration without actually reading it himself. [Galloway Declaration, ¶ 15]. It was only when Dr. Galloway reviewed his declaration during preparation for his deposition in this litigation that he realized it did not fully describe Quickie's expectations of its outside patent counsel with respect to the '160 Patent. [Galloway Declaration, ¶ 16].

20. Dr. Galloway thus testified in his deposition that the declaration was incomplete in that Quickie continued to expect GT and Mr. Sharinn to monitor and provide notice of the maintenance fee deadlines even after Thelen had been retained to litigate the Reexamination Proceedings. [Resp. Ex. P, p. 82, line 20 - p. 83, line 9]. Quickie also informed the PTO in a subsequent filing that, while Thelen was in fact Quickie's authorized representative in connection with the Reexamination Proceedings, Quickie nevertheless had every reason to expect GT and Mr. Sharinn to continue to monitor the maintenance fee deadlines and provide notice shortly before those fees were due to be paid. [Galloway Declaration, ¶¶ 17 - 18; Resp. Ex. Q, pps. 3-4]. Ironically, while GT now questions Galloway's credibility because he did not closely review his declaration before authorizing his staff to sign it, Mr. Sharinn testified that he did the same thing when executing the Fee Address Notice. Specifically, he said that he did not pay "a lot of attention" to the Fee Address Form which, he says, was "generated by a paralegal and probably put in front of me with a stack of others just like it." [Resp. Ex. U, p. 135, line 7 - p. 139, line 10]. Of course, the Fee Address Notice is one of the primary documents by which GT notified the PTO and Quickie that GT was responsible for handling maintenance fees on the '160 Patent.

However, unlike Dr. Galloway and Quickie who both have supplemented their originally incomplete statements to the PTO, neither Mr. Sharinn nor GT have undertaken any effort whatsoever to notify the PTO or Quickie that their filing of the Fee Address Notice was in error or that they are not the proper parties to receive PTO correspondence concerning maintenance fees on the '160 Patent.

21. Quickie sought GT's assistance in providing documents and information to support the efforts to revive the '160 Patent, but GT flatly refused to answer any of Quickie's questions or provide any of GT's documents. [Galloway Declaration, ¶ 19]. After the '160 Patent expired, Quickie was unable to pursue its patent infringement claims against Medtronic and other manufacturers of products that infringe on the '160 Patent. Medtronic and those other manufacturers continue to this day to make millions of dollars off of Quickie's invention.<sup>4</sup> [Galloway Declaration, ¶ 20].

### **RESPONSE**

22. As discussed, GT argues that summary judgment is appropriate because: (1) GT had been fired as Quickie's attorneys prior to the maintenance fees becoming due, and thus there was no negligence, there is no proximate cause, and the statute of limitations on Quickie's claims has expired; and (2) Quickie's negligent misrepresentation claim should be dismissed because it is duplicative of the legal malpractice claims. As discussed below, none of those arguments merit summary judgment for the simple fact that GT has failed to satisfy its burden of "demonstrate[ing] that no genuine issue respecting any material fact exists" as to one or more

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<sup>4</sup> Pursuant to the stipulation approved by the Court on June 23, 2008 [Dkt. No. 33], GT's summary judgment motion was to be limited solely to liability issues to the exclusion of damages issues. Nevertheless, the GT Motion argues that Quickie sustained no damages because the '160 Patent was allegedly "gutted" in subsequent PTO proceedings. *See, e.g.*, GT Motion pps. 10, n. 8. In light of the stipulation, Quickie asks the Court to strike GT's arguments and summary judgment on those issues.

elements of Quickie's claims. *Harris v. Provident Life and Accident Ins Co.*, 310 F.3d 73, 79 (2<sup>nd</sup> Cir. 2002). Whether malpractice has occurred is "normally a factual determination for the jury" and on summary judgment the Court is only required to determine whether there is sufficient evidence from which a reasonable jury could find that GT did in fact continue to represent Quickie when the maintenance fees became due. *Diamond v. Sokol*, 468 F.Supp. 626, 632 (S.D.N.Y. 2006).

**Quickie Did Not Discharge GT As Its Attorney With Respect To The Monitoring And Payment Of The '160 Patent Maintenance Fees**

23. New York substantive law applies to determine the scope and duration of the attorney-client relationship between Quickie and GT. *Diamond*, 468 F.Supp. at 632, *citing* *Achtman v. Kirby, McInerney & Squire, LLP*, 464 F.3d 328, 337, n. 2 (2<sup>nd</sup> Cir. 2006) (deeming New York law applicable to legal malpractice claim regardless of the basis for federal jurisdiction). As discussed, there is a significant amount of evidence from which a jury could conclude that GT continued to represent Quickie with respect to the '160 Patent beyond the time when maintenance fees were due. For similar reasons, GT's proximate cause and statute of limitations arguments fail. Accordingly, GT has not demonstrated that it is entitled to summary judgment.

*There are genuine issues of material fact concerning the scope and duration of the GT/Quickie attorney-client relationship.*

24. GT's summary judgment arguments are premised on one central contention; namely, that GT was discharged as Quickie's attorney with respect to the '160 Patent before the maintenance fees were due. *See, e.g.*, GT Motion, p. 2 ("In sum, GT bears no responsibility for the loss of the patent since GT was not counsel to Quickie when the Maintenance Fee became and was due . . . [sic]"). In New York, the jury must look to the words and actions of the parties

to construe the scope and duration of the attorney-client relationship between GT and Quickie. *Tropp v. Lumer*, 23 A.D.3d 550, 551, 806 N.Y.S.2d 599, 600 (2<sup>nd</sup> Dept. 2005); *C.K. Indus. Corp. v. C.K. Indus. Corp.*, 213 A.D.2d 846, 848, 623 N.Y.S.2d 410, 411 (3<sup>rd</sup> Dept. 1995). Evidence that the defendant "either affirmatively led plaintiff to believe that he was acting as plaintiffs attorney or knowingly allowed plaintiff to proceed under that misconception," raises fact issues concerning the extent and duration of the attorney-client relationship, thus making summary judgment inappropriate. *See Solondz v. Barash*, 225 A.D.2d 996, 998, 639 N.Y.S.2d 561, 564 (3<sup>rd</sup> Dept. 1996) (affirming summary judgment after noting that plaintiff failed to introduce any such evidence).

25. As recited previously, there is ample evidence from which a jury could conclude that Quickie reasonably expected GT to continue acting as its attorneys with respect to its intellectual property interests generally and the '160 Patent in particular through the time when the maintenance fees were due. Specifically, Quickie's summary judgment evidence confirms that:

- GT became Quickie's attorney for monitoring and providing notice of the maintenance fees when Mr. Sharinn joined GT [Resp. Ex. U, p. 148, line 19 - p. 151, line 25; Resp. Ex. T, p. 69, line 3 - p. 71, line 4];
- GT entered the '160 Patent maintenance fee deadlines into its internal calendaring system [Resp. Ex. U, p. 110, line 22 - p. 111, line 10; Resp. Ex. T, p. 221, line 14 - p. 223, line. 10];
- Months after Mr. Sharinn says he was "fired," he notified the PTO and Quickie that he was Quickie's agent for receipt of maintenance fee correspondence concerning the ' 160 Patent [Resp. Ex. U, p. 135, line 5 - p. 143, line 19; Fell Declaration, ¶ 11];
- Months after Mr. Sharinn says he was "fired," he continued to represent Quickie concerning the '160 Patent and other intellectual property matters [Resp. Ex. U, p. 105, line 18 - p. 110, line 11; p. 221, line 13 - p. 226, line 21];

- None of the correspondence transferring files from GT to Thelen references the client/matter numbers GT established for monitoring maintenance fees on the '160 Patent [Mov. Ex. AF; Resp. Ex. U, p. 228, line 19 - p. 229, line 23];
- The Thelen partner in charge of representing Quickie in the Reexamination Proceedings confirms that GT conveniently now misconstrues the purpose and legal effect of the Reexamination Power of Attorney [Krebs Declaration, ¶¶ 6-8]; and
- Even though GT had more than enough reason to be aware that Quickie was expecting GT to continue monitoring the maintenance fee deadlines, GT *never* told Quickie that it had removed the '160 Patent from its internal calendaring systems. [Galloway Declaration, ¶¶ 10-13; Fell Declaration, ¶¶ 13-15].

26. The jury will not just hear from Quickie's witnesses about how they were led to believe that GT was honoring its commitments, they will also hear that GT's own witnesses cannot agree on when and how GT was allegedly discharged from those commitments to Quickie. Mr. Sharinn, for example, will testify that the Reexamination Power of Attorney was a "formality," and that it had no effect on his responsibility for looking after the '160 Patent:

Q: Do I understand, though, that your testimony is that you ceased having responsibility for the '160 Patent as of the date that you received the phone call on October of 2002 from [Quickie] following the Markman hearing?

A: That would have been my understanding, yes, sir.

Q: And it didn't take any revocation of any Power of Attorney for you to have that understanding?

A: They made it very clear on the telephone [in October 2002] that we had, that I was to do no more work and bill no more time.

Q: So the revocation of a Power of Attorney would have been a formality in your, to your understanding?<sup>5</sup>

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<sup>5</sup> GT's counsel asserted a general objection to the form of this question, but did not specify the basis for that objection.

A: I guess that would be a fair characterization.

[Resp. Ex. U, p. 153, line 5 - p. 154, line 2]. Mr. Sutton, on the other hand, will testify that, but for the Reexamination Power of Attorney, GT would have "advised Quickie or paid the Fee itself as a disbursement." GT Motion, p. 14, n. 14; Sutton Declaration, p. 17, ¶ 89.

27. For its part, GT will argue that the jury should disregard that evidence because Dr. Galloway signed a sworn declaration, and Quickie filed PTO pleadings, that do not mention GT as having responsibility for the '160 Patent, but those filings are just one side of the disputed issue. *See, e.g.*, GT Motion, pps. 3 - 4. As discussed, Dr. Galloway testified in deposition that his declaration was incomplete in that he was still expecting GT to honor its commitment to monitor the '160 Patent, and Quickie did in fact file supplemental PTO pleadings clarifying its arguments with respect to GT's ongoing responsibilities. [Galloway Declaration, ¶¶ 15-16; Resp. Ex. P, p. 82, line 20 p. 83, line 9; Resp. Ex. Q]. GT simply ignores this evidence, and improperly asks the Court to give no weight to it, but instead find that Dr. Galloway's deposition testimony is not credible in light of his earlier statements to the PTO. Ironically, GT asks the Court to discredit Dr. Galloway's declaration and deposition testimony, yet at the same time GT ignores the fact that, unlike Dr. Galloway and Quickie, neither Mr. Sharinn nor GT has *ever* retracted the Fee Address Notice that they filed with the PTO in December 2002.

28. Of course, it is the jury's function to assess a witnesses' credibility at trial, it is not the Court's responsibility to make that assessment when deciding a motion for summary judgment. *See Diamond*, 468 F.Supp. at 632 ("the court is not to make any credibility assessments or weigh the evidence at this stage.") Rather than weighing the evidence and making credibility assessments, the Court is only required to determine whether, after reviewing the evidence and making all reasonable inferences and resolving all ambiguities in Quickie's



favor, a reasonable jury could find that GT either "affirmatively led [Quickie] to believe that [it] was acting as [Quickie's] attorney or knowingly allowed [Quickie] to proceed under that misconception." *Solondz*, 225 A.D.2d at 998; *Diamond*, 468 F.Supp. at 632. Judge Lynch stated in *Diamond*:

While the standard for proving legal malpractice is a challenging one, plaintiff need not prove her case at this stage. She need only show what is required to survive any summary judgment motion, which is that a reasonable jury *could* find in her favor on the existing record. "[W]hether malpractice has been committed is normally a factual determination to be made by the jury." Once the plaintiff has shown sufficient evidence that a reasonable fact finder, drawing all inferences in her favor, could find the required elements, she is entitled to proceed to trial, no matter how strong or weak her case may seem to the Court [internal citations omitted].

*Diamond*, 468 F.Supp. at 634. As discussed, the record contains an abundance of evidence from which a reasonable jury could find that GT committed malpractice in failing to provide the promised maintenance fee reminders. For that reason alone, GT is not entitled to summary judgment.

29. Moreover, none of the cases GT cites support its request for summary judgment on the evidentiary record present here. For example, GT cites *Somma v. Dansker & Aspromonte Assoc.*, 44 A.D.3d 376, 843 N.Y.S.2d 577 (1<sup>st</sup> Dept. 2007), yet that one-page decision simply states, without any discussion whatsoever, that "defendants no longer represented plaintiff at the time" of the alleged malpractice. *Id.* GT cites other cases that likewise contain no discussion of the evidence. *See, e.g., Perks v. Lauto & Garabedian*, 306 A.D.2d 261, 760 N.Y.S.2d 231 (2<sup>nd</sup> Dept. 2003) (dismissing plaintiff's malpractice claims after tersely noting only that the defendant "submitted evidence establishing that plaintiffs discharged them and hired new counsel"); *Golden v. Cascione, Chechanover & Purcigliotti*, 286 A.D.2d 281, 729 N.Y.S.2d 140 (1<sup>st</sup> Dept.



2001) (finding, without any discussion whatsoever, that defendant was not plaintiff's attorney at the time of the alleged malpractice).

30. GT does cite one case in which the Court discussed the plaintiffs evidence, but that discussion does not support GT's summary judgment arguments here. *Greenwich v. Markhoff*, 234 A.D.2d 112, N.Y.S.2d 704 (1<sup>st</sup> Dept. 1996). In *Greenwich*, the plaintiff argued that his former litigation counsel was negligent by failing to commence a workers compensation lawsuit before the statute of limitations expired. *Id.* at 113. In upholding the trial court's dismissal of those claims, the appellate division found that because the plaintiff acknowledged that he replaced his former litigation counsel at least two years before limitations expired, the former law firm could not be held responsible for malpractice *in handling that litigation*. *Id.* at 114. The *Greenwich* decision might be relevant if Quickie asserted that GT committed malpractice in the Medtronic litigation, but that is not what Quickie claims. Instead, Quickie's malpractice claims are based upon an engagement that was separate and apart from GT's prior role as counsel to Quickie in the Medtronic litigation. For that reason, *Greenwich* likewise fails to support GT's summary judgment arguments.

31. In contrast to the sparse evidentiary records revealed in the cases GT cites in its motion, Quickie has presented an abundance of evidence raising questions about the scope and duration of the Quickie/GT engagement. New York courts routinely deny summary judgment after reviewing the type of evidentiary record that is present here. For example, in *Tropp*, 23 A.D.2d at 551, the Court denied summary judgment because the evidence showed that, as is the case here, the defendant said he would monitor the plaintiffs' case and that plaintiff and defendant discussed the case on a regular basis. *Id.* In another case, the court affirmed denial of a defendant's motion for summary judgment because:

although defendant testified that he did not 'directly' understand that plaintiffs were expecting him to provide legal services vis-à-vis the project, he admitted that he never specifically disavowed his role as their attorney.

*McLenithan v. McLenithan*, 273 A.D.2d 757, 710 N.Y.S.2d 674 (3<sup>rd</sup> Dept. 2000). Similarly, summary judgment was denied for a law firm who missed the deadline to file a workers compensation lawsuit, even though that law firm argued that its engagement did not include bringing lawsuits. *Campbell v. Fine, Olin & Anderson, P.C.*, 168 Misc.2d 305, 306, 642 N.Y.S.2d 819, 820 (N.Y. Sup. Ct. 1996). In so finding, the trial court made an observation that is equally applicable to the present case: if the law firm believed that the engagement was limited, it had "an affirmative duty to ensure that the client understands [the] limits imposed by the attorney on the extent of the work to be performed." *Id.* Indeed, even where the plaintiff acknowledged that the attorney played no role whatsoever in the negotiation of a settlement agreement that had been set aside because it was not drafted and executed properly, summary judgment was still denied because there was evidence that the defendant was plaintiff's attorney for the related task of drafting and executing that agreement. *Shanley v. Welch*, 31 A.D.3d 1127, 1128, 818 N.Y.S.2d 878, 880 (4<sup>th</sup> Dept. 2006).

32. Likewise here, Quickie has presented evidence that GT told Quickie that it would monitor the '160 Patent maintenance fee deadlines. *See* Statement of Facts, *infra*; *see also Tropp*, 23 A.D.2d at 551 (denying summary judgment where defendant said he would monitor the plaintiffs' case). Moreover, although Mr. Sharinn maintains that he was fired as Quickie's attorney in October 2002, he informed the PTO in December 2002 that he was still Quickie's attorney for maintenance fees, and he continued to "lend his ear" when Quickie called him to talk about what was happening in the case. [Resp. Ex. U, p. 105, line 18 - p. 106, line 19]. *See McLenithan*, 273 A.D.2d at 759 (denying summary judgment in part because plaintiffs offered

evidence other than their "unilateral beliefs" to show an attorney-client relationship). Similarly, even though GT may have thought that Quickie was not expecting GT to continue monitoring the '160 Patent maintenance fees after Thelen was hired, GT never disavowed its role as Quickie's attorney in that regard. *McLenithan*, 273 A.D.2d at 759 (finding triable fact issues where defendant attorney failed to specifically disavow responsibility for one part of a real estate project where he represented plaintiff in other respects concerning the same project); *see also Campbell*, 168 Misc.2d at 308 (denying summary judgment because "an attorney has an affirmative duty to ensure that the client understands any limits imposed by the attorney on the extent of the work to be performed."))

33. As Judge Lynch noted in *Diamond*, it is the jury's function to review this evidence and determine whether or not GT committed malpractice here. 468 F.Supp. at 634. Quickie has offered compelling evidence that will lead any reasonable jury to conclude that GT absolutely committed malpractice when it failed to timely provide the promised reminder that maintenance fees were due on the '160 Patent. For those reasons, Quickie asks the Court to deny GT's motion for summary judgment.

*GT is not entitled to summary judgment on its proximate cause arguments*

34. Citing many of the same cases it cites in support of the assertion that GT had been fired before the maintenance fees were due, GT also argues that summary judgment is appropriate because GT could not have proximately caused Quickie's damages after it had allegedly been replaced by Thelen. [GT Motion, pps. 20 22.] As discussed previously, it is hardly a foregone conclusion that GT was in fact replaced by Thelen as to the '160 Patent maintenance fees, and there is ample evidence from which a jury could conclude that GT was never discharged from that responsibility. GT's failure to demonstrate the absence of fact issues

as to the scope and extent of its engagement as Quickie's attorney is fatal to its proximate cause arguments.

35. The cases GT cites in support of its proximate cause arguments also fail to support the entry of summary judgment on the evidentiary record present here. For example, GT cites *Albin v. Pearson* and *Reibman v. Senie*, yet those cases simply state that proximate cause was lacking because the plaintiff had discharged his prior counsel well before the alleged malpractice occurred, without any discussion at all of the evidence in support of that conclusion. *Albin v. Pearson*, 289 A.D.2d 272, 734 N.Y.S.2d 564 (2<sup>nd</sup> Dept. 2001); *Reibman v. Senie*, 302 A.D.2d 290, 756 N.Y.S.2d 164 (1<sup>st</sup> Dept. 2003). *Kozmol* is likewise of no help to GT's arguments because it assumes, again without discussion, that proximate cause was lacking because the plaintiff had hired new counsel to pursue his failed personal injury lawsuit. *Kozmol v. Law Firm of Allen L. Rothenberg*, 241 A.D.2d 484, 660 N.Y.S.2d 63 (2<sup>nd</sup> Dept. 1997).

36. The only proximate cause case GT cites in which the Court analyzed the evidence actually supports denial of summary judgment here. *Parker Duryee Rosoff & Haft v. Ariss*, 250 A.D.2d 414, 673 N.Y.S.2d 11 (1<sup>st</sup> Dept. 1998). In *Parker*, plaintiff's prior counsel argued proximate cause was lacking because he had been replaced with new counsel in the underlying arbitration proceeding. *Id.* The court agreed that the claims should be dismissed, but only because the successor attorney testified that:

he was able to present all of plaintiff's claims and evidence at the arbitration, [thus] negating any claim that the unfavorable result of the arbitration was proximately cause by [the first attorney's] alleged negligence.

*Ariss*, 250 A.D.2d at 414. Had Thelen similarly testified that it was responsible for the '160 Patent maintenance fees and that GT's failure to monitor the deadlines had no impact on Thelen's failure to pay those fees, *Parker* might support GT's assertion that proximate cause is lacking.

Thelen, however, testified that it *did not* take on responsibility for the maintenance fees and that GT misread the Reexamination Power of Attorney, thus creating a fact issue for the jury to resolve. [Krebs Declaration, ¶¶ 6 - 8]. Regardless of what the jury ultimately decides, it is clear that summary judgment is inappropriate on the evidentiary record present in this case.

*GT is not entitled to summary judgment on its statute of limitations arguments*

37. GT's limitations arguments incorrectly assume, without any discussion or legal support whatsoever, that Quickie's malpractice claims arose when the Reexamination Power of Attorney was filed in March, 2003. [GT Motion, p. 23.] On the contrary, New York substantive law provides that when an attorney is accused of missing a deadline to take some action, the malpractice occurs when the deadline expires. *See Shumsky v. Eisenstein*, 96 N.Y.2d 164, 166, 750 N.E.2d 67, 69 (N.Y. 2001) (noting that a claim for failing to bring a cause of action before the statute of limitations expired accrues when the limitations period expired); *Gamm v. Allen*, 57 N.Y.2d 87, 93, 439 N.E.2d 390, 393 (N.Y. 1982) (finding that plaintiff's malpractice claim arose when plaintiff's attorney missed the deadline to timely file a notice of claim).

38. Quickie asserts that GT committed malpractice by (a) failing to notify Quickie shortly before maintenance fees were due on the '160 Patent, and (b) failing to pay those fees itself. The last day to pay maintenance fees on the '160 Patent was May 23, 2004, and it was the failure to pay those fees on that date that caused Quickie's damages. As with the statute of limitations cases cited above, therefore, Quickie's malpractice claims against GT arose when the period to pay maintenance fees expired on May 23, 2004. *Shumsky*, 96 N.Y.2d at 166; *Gamm*, 57 N.Y.2d at 93. This action was commenced on April 18, 2007, less than three years later. [Resp. Ex. R]. Accordingly, Quickie's claims against GT clearly fall within New York's three-year statute of limitations.

39. Even if one assumes that Quickie's malpractice claims against GT did arise in March 2003, the deadline to bring those claims will be tolled by the continuous representation doctrine to the extent the trier of fact determines that GT continued to represent Quickie as to the '160 Patent at least until April 18, 2004 (three years before commencement of this lawsuit). *See Shumsky*, 96 N.Y.2d at 169-71 (applying continuous representation rule where the record established that "plaintiffs were left with the reasonable impression that defendant was, in fact, actively addressing their legal needs.") As discussed previously, there is an abundance of evidence showing that after GT accepted Quickie's request that it monitor the '160 Patent deadlines, and while GT continued to act as Quickie's intellectual property counsel, GT stopped monitoring the '160 Patent with no notice whatsoever to Quickie. That evidence raises triable fact issues concerning the scope and extent of the Quickie/GT engagement, thus rendering summary judgment inappropriate. *Troop*, 23 A.D.2d at 551 (finding that, in light of the triable issues with respect to the duration of an attorney client relationship, "plaintiff" raised a triable issue of fact as to whether the three-year statute of limitations was tolled by the doctrine of continuous representation.") For those reasons, Quickie asks the Court to reject GT's statute of limitations summary judgment arguments.

**GT is not entitled to summary judgment on Quickie's negligent misrepresentation claim**

40. Quickie alleges that GT was its attorney with respect to maintenance fees on the '160 Patent up to and through the May 23, 2004 deadline to pay those fees. If the jury agrees with Quickie on that issue, then Quickie's negligent misrepresentation claims may be duplicative of its legal malpractice claims. *See Sage Realty Corp. v. Proskauer Rose LLP*, 251 AD.2d 35, 39, 675 N.Y.S.2d 14, 18 (1<sup>st</sup> Dept. 1998) (dismissing negligent misrepresentation claims in favor of allowing malpractice claims to proceed). On the other hand, if the jury finds that GT was not

Quickie's attorney on May 23, 2004, then Quickie's negligent misrepresentation claims will survive to the extent Quickie is able to show a "special relationship" between itself and GT. *Lama Holding Co. v. Shearman & Sterling*, 758 F.Supp. 159, 161 (S.D.N.Y. 1991) (allowing negligent misrepresentation claims to proceed against law firm that was alleged to have promised to notify plaintiff if there were any significant changes to United States tax laws.) As such, summary judgment is inappropriate because resolution of Quickie's negligent misrepresentation claim hinges on how the jury resolves the fact issues concerning the scope and duration of the Quickie/GT attorney client relationship.

41. In New York, a negligent misrepresentation claim may be asserted against attorneys who are in a "special relationship" with the plaintiff that approaches privity. *Mason Tenders Dist. Counsel Pension Fund v. Messera*, 4 F.Supp.2d 293, 303 (S.D.N.Y. 1998). A "special relationship" exists where parties are "so close as to approach that of privity" such that they are held to a "closer degree of trust than an ordinary business relationship." *See Solondz*, 225 A.D.2d at 998 (upholding negligent misrepresentation claims after finding that there was no attorney-client relationship); *Lama Holding Co.*, 758 F.Supp. at 161 (allowing negligent misrepresentation claims to proceed against law firm that was alleged to have promised to notify plaintiff if there were any significant changes to United States tax laws.) Moreover, even had GT been discharged, ethics rules required GT to take steps to ensure Quickie's rights were not jeopardized by the transfer of the matter to Thelen, and GT admits that it took no such steps. NY CODE OF PROFESSIONAL RESPONSIBILITY, Ethical Consideration 2-41 (2007).

42. The summary judgment evidence demonstrates that GT acted as Quickie's agent with respect to the '160 Patent and specifically promised to notify Quickie before the maintenance fees were due. While GT will undoubtedly argue otherwise, the Court need not



weigh the evidence and make credibility assessments in deciding GT's motion for summary judgment. Instead, the Court is only required to determine whether a reasonable jury, when presented with the evidence of a special relationship between Quickie and GT, could find that such a relationship did exist. *Diamond*, 468 F.Supp. at 634. For the reasons discussed, there is more than enough evidence from which a reasonable jury could find a "special relationship" between Quickie and GT even in the unlikely event that they find no attorney-client relationship. Quickie therefore asks the Court to deny GT's motion for summary judgment on Quickie's negligent misrepresentation claim.

### **CONCLUSION**

For all of these reasons, Quickie requests the Court to: (i) deny GT's Motion for Summary Judgment; (ii) enter an order setting this matter for trial; and (iii) grant Quickie all other relief to which it is entitled.

Dated: August 26, 2008  
New York, New York

DIAMOND McCARTHY LLP

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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QUICKIE, LLC,

Plaintiff

- against -

GREENBERG TRAURIG, LLC,

Defendant

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07-cv-10331 (RMB)(DFE)

ECF CASE

**DECLARATION OF MARK F. EVENS**

I, Mark F. Evens, hereby declare as follows:

1. I am a director of the Washington, D.C. based law firm Sterne Kessler Goldstein Fox, PLLC ("Stern Kessler"), where I focus my practice on intellectual property litigation, including infringement claims, trademark issues, false advertising matters and trade secret cases. Prior to joining Sterne Kessler in 200\_, I was a partner of the Thelen Reid & Priest *aka* Thelen, Reid, Brown, Raysman & Steiner, L.L.P. ("Thelen") law firm. This declaration is based on my personal knowledge and experience, as well as my review of relevant documents. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

2. On July 3, 2002, Quickie, LLC ("Quickie") retained Thelen and me to provide "litigation services related to the Quickie, LLC legal action against Medtronic, Inc." [Resp. Ex. A]. At that time, Quickie's suit against Medtronic was already pending before the Honorable Judge Gerard A. Lynch in the United States District Court for the Southern District of New York. Greenberg Traurig, LLC ("Greenberg"), and in particular Paul Sutton and

Todd Sharinn of that firm, represented Quickie in that suit against Medtronic. Greenberg represented Quickie in the *Medtronic* litigation even after Thelen and I were initially retained as co-counsel.

3. In or around October 2002, however, after Mr. Sutton failed to appear for a pivotal *Markman* hearing, Quickie decided to remove Greenberg as its counsel in the *Medtronic* litigation and proceed with only Thelen as counsel of record. [Resp. Ex. B]. Quickie was upset about Mr. Sutton's absence at the critical hearing and overall disappearance in the case, especially in the face of ongoing billing entries, as well as over Mr. Sharinn's relatively limited first-hand trial experience. I requested the litigation files from Greenberg and asked Todd Sharinn to execute a Substitution of Counsel. [Resp. Ex. C].

4. On October 15, 2002, Paul Sutton sent the signed substitution of counsel to Thelen. [Resp. Ex. D]. On October 16, 2002, Greenberg transferred the litigation files to me at Thelen, which contained a copy from their files of the file history of the '160 Patent equivalent to the file history held by the United States Patent and Trademark Office (the "PTO"), prior art, and other documentation for the '160 Patent that was at issue in the litigation against Medtronic. [Resp. Ex. E].

5. I was one of the intended recipients of the Greenberg file transfer letter which specifically states that the files being transferred related to the *Medtronic* litigation, Greenberg matter number 010400. [Resp. Ex. E]. I requested the *Medtronic* litigation files solely so that I could fully represent Quickie in connection with the pending litigation. [Resp. Ex. C]. Quickie did not ask me or Thelen to take responsibility for prosecution or maintenance of the '160 Patent, and Greenberg did not mention, let alone transfer, that responsibility when it sent the *Medtronic* litigation files to me. At the time, Greenberg sent me copies of documents, but

no original files for the '160 Patent.

6. Indeed, because I understood that an attorney must be licensed based upon examination and satisfaction of prerequisite experience to practice before the PTO, which I am not, I could not then nor at any other time seek or accept responsibility for any patent in relation to the PTO. And I was not asked, nor did I personally do so, then or at any time in connection with the '160 Patent. My sole direction from Quickie, which I communicated to Greenberg, was to assume responsibility for litigation against Medtronic in the then-pending lawsuit, a suit in which Thelen and I had been previously engaged as co-counsel with Greenberg. I felt well-qualified to handle that responsibility alone as litigation counsel going forward.

7. In short, Thelen and I only served as Quickie's litigation counsel against Medtronic. [Resp. Ex. A]. No more and no less. Greenberg generally, and Mr. Sharinn in particular, were Quickie's established intellectual property counsel for not only the '160 Patent, but also Quickie's other intellectual property interests: before Thelen and I joined the *Medtronic* litigation as co-counsel; during the time that we acted as co-counsel with them; and after Greenberg withdrew from the litigation. In my experience, it is not at all unusual as here for clients like Quickie to hire separate litigation counsel to handle adversarial actions against potential infringers while retaining primary intellectual property counsel to oversee the general prosecution, exploitation and maintenance of their intellectual property interests. That is my understanding of the relationship between Quickie, Greenberg and Thelen during the *Medtronic* litigation. Greenberg remained at all times Quickie's general or primary intellectual property counsel, while Thelen was retained as special litigation counsel in connection with the *Medtronic* litigation.

8. The contemporaneous documentation supports my basic understanding. To begin with, there is Greenberg's above-referenced file transfer letter that only and specifically references the *Medtronic* litigation. [Resp. Ex. E]. In addition, even after Greenberg transferred the *Medtronic* litigation files to us at Thelen, Mr. Sharinn notified the PTO, pursuant to 37 C.F.R. 1.363(a)(3), that he was to receive all correspondence concerning maintenance fees on the '160 Patent. [Resp. Ex. F]. And furthermore, there is the October 15, 2002, letter to Greenberg and Mr. Sharinn from Quickie's General Counsel, Alan Fell, following Quickie's decision to remove Greenberg as counsel in the *Medtronic* litigation. [Resp. Ex. B]. In the letter, Mr. Fell confirms that Quickie would continue to look to Mr. Sharinn and Greenberg as its primary intellectual property counsel.

9. That Mr. Sharinn understood and represented as much at the time is evidenced as well by a December 2, 2002, email to him from Adrienne Levin of the Bryan Cave law firm (where Sharinn used to work) thanking him for confirming that he was still responsible for the '160 Patent. [Resp. Ex. V; Resp. Ex. U, p. 143, line 20 – p. 147, line 19]. It is certainly what I understood at the time from all of the contemporaneous discussions and correspondence. Neither Mr. Sharinn nor anyone else at Greenberg or otherwise ever said or indicated anything to the contrary. In fact, there was a noticeable resistance and reluctance on the part of Mr. Sharinn to transfer files or otherwise relinquish any authority or responsibility. It was for this reason that I finally had to contact Mr. Sutton to have the files actually transferred. [Resp. Ex. W].

10. As a practicing attorney who has both transferred clients and files to successor counsel and had clients and files transferred to me from predecessor counsel, I would have expected Greenberg to expressly advise me in writing of any discharge of its responsibilities

to Quickie apart from representation in the *Medtronic* litigation. Moreover, I would have expected to expressly acknowledge the same in writing. This is particularly true with respect to clients involving multiple entities and/or matters.

11. Subsequently, on November 25, 2002, shortly after the *Markman* decision in which the '160 Patent's claims were favorably construed by Judge Lynch (from Quickie's perspective), Medtronic changed course and sought to have the PTO reexamine the '160 Patent in an effort to otherwise limit the claims that had been construed by Judge Lynch. In as much as the reexamination proceedings were an integral part of the pending lawsuit and accordingly adversarial in nature, I suggested to Quickie that Thelen also handle the reexamination proceedings. More specifically, I suggested that Robert Krebs, a very well-respected and experienced patent attorney duly registered upon examination to practice before the PTO, head up a team of attorneys at Thelen to specifically handle the reexamination proceedings. Quickie agreed, and Quickie and Thelen accordingly expanded the engagement, authorizing Thelen to represent Quickie before the PTO in connection with the reexamination proceeding.

12. Further to representing Quickie in the PTO reexamination, Mr. Krebs executed a PTO form Revocation of Prior Powers of Attorney and New Power of Attorney (the "Reexamination Power of Attorney") that explicitly displayed the "CONTROL NO." for the reexamination. [Resp. Ex. G]. I understood from Mr. Krebs that he was directed to do so by the PTO to ensure that he and other Thelen attorneys were recognized by the PTO as Quickie's authorized representatives in connection with reexamination of the '160 Patent. On March 17, 2003, Thelen filed the Reexamination Power of Attorney with the PTO, along with a Change of Attorney Docket Number and Change of Address Notice [Resp. Ex. H] to ensure

that Thelen received all PTO communications concerning the reexamination.

13. Indicative of the related nature between the pending litigation and reexamination proceedings, Medtronic openly acknowledged in discussions with me and Quickie at the time that it resorted to the PTO reexamination proceedings to hopefully negate Judge Lynch's *Markman* ruling in favor of Quickie,<sup>1</sup> and that a settlement was likely if the reexamination proceedings proved unsuccessful. Medtronic suggested, therefore, that Quickie agree to put the trial on hold pending a determination in the reexamination. After a great deal of discussion and consideration, Quickie agreed. Accordingly, in July 2005, the *Medtronic* litigation was dismissed without prejudice pursuant to a stipulation agreed to by Quickie, Medtronic, and the Court pending resolution of the reexamination proceedings.

14. Thelen's representation of Quickie in the closely-related reexamination proceedings in no way affected Greenberg's ongoing and preexisting role as Quickie's primary intellectual property counsel. I certainly did not understand anything that Thelen did in connection with the reexamination proceedings to alter that responsibility. And, again, the contemporaneous documentation bears this out. On approximately May 19, 2003, Mr. Sharinn sent Mr. Fell of Quickie a fax in which he expressed surprise and understandable upset that he and Greenberg would not be handling the reexamination proceedings on behalf of Quickie. Tellingly, he further advised that neither he nor Greenberg would take any "further action on this matter (emphasis added)," expressly referring to the internal Greenberg client/matter number (51822.010900) that he had opened for the reexamination proceedings. [Resp. Ex. X].

15. Notwithstanding Greenberg's primary role and responsibility for Quickie's

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<sup>1</sup> Judge Lynch also had by that time denied summary judgment for Medtronics and trial was but a month or two away.

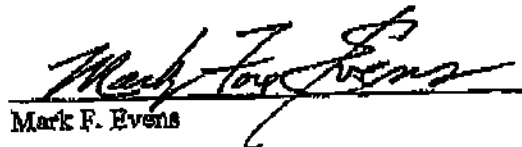
overall intellectual property interests in general, and specifically maintenance of the '160 Patent, I also was and am of the view that Thelen should have checked as a matter of prudence on the status of the '160 Patent in the course of the reexamination proceedings. Greenberg has taken comments of mine to that effect out of context and without further inquiry of me to suggest that this somehow absolves Greenberg. I do not believe that it does. I do not believe that Greenberg's responsibility for allowing Quickie's valuable and costly intellectual property rights in the '160 Patent to prematurely expire for lack of the most basic attention is at all mutually exclusive of what I believe Thelen should have done; and believed that Sharinn and Greenberg were at all relevant times Quickie's primary intellectual property counsel, with the '160 Patent being but one of many intellectual property interests, and with Mr. Sharinn and Greenberg being a key common denominator.

16. Indeed, in a most telling and disturbing fact, Mr. Sharinn and Greenberg wrote to Quickie in April 2004 – just a month before the '160 Patent lapsed – to advise Quickie about the issuance of yet another separate patent to Quickie. [Resp. Ex. Y]. Care was again taken to promise to timely remind Quickie of maintenance fees as they became due. And yet, no mention was made of the then perilously overdue maintenance fees on the '160 Patent. It can hardly be argued that Quickie was not then a Greenberg client, and it is asking a lot of a client to split hairs as finely as Greenberg now claims to have done so in unilaterally abandoning responsibility for timely reminding Quickie of the maintenance fees that actually had to be paid at that time on the '160 Patent.

17. I eventually learned in July 2006 that the '160 Patent had expired while the reexamination proceedings were still pending due to the failure to pay maintenance fees. Steve Colvin of Quickie informed me that St. Jude Medical, a large medical device company,

pulled out of negotiations to license the '160 Patent from Quickie at that time because the '160 Patent had expired. Upon confirming that the '160 Patent had indeed expired, I referred Quickie to Timothy Maier of the law firm of Maier & Maier LLC to represent Quickie in petitioning the PTO to reinstate the patent. I had by that time left Thelen and joined the law firm of Stern, Kessler Goldstein Fox in Washington, D.C. I referred the matter since I am not a registered patent attorney and because Stern Kessler was also otherwise conflicted due to representation of Medtronic in unrelated intellectual property matters.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C. on the 26th day of August, 2008.

  
Mark F. Evans



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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QUICKIE, LLC,

Plaintiff

- against -

GREENBERG TRAURIG, LLC,

Defendant

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07-cv-10331 (RMB)(DFE)

ECF CASE

**DECLARATION OF ALAN FELL**

1. I am a partner in the New York, New York office of Rick, Steiner, Fell & Benowitz LLP. ("Rick Steiner"). I am also a member of Quickie LLC ("Quickie"). I am over the age of 21 years, am of sound mind, and have never been convicted of a felony or crime of moral turpitude. This declaration is based on my personal knowledge and experience, as well as my review of relevant documents. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

2. I have provided legal counsel to Dr. Stephen Colvin and Dr. Aubrey Galloway since the mid 1990's. In 1998, I advised Drs. Colvin and Galloway in the formation of Quickie, which was formed to hold certain intellectual property that the doctors were contemplating licensing to Medtronics, Inc. ("Medtronics"). I also advised Quickie in connection with the negotiations with Medtronics concerning licensing for a valuable suture-holding product that Drs. Colvin, Galloway, and others developed which was referred to as the "Quickie Device."

3. My legal practice is general in nature, and I am not admitted to practice before the United States Patent and Trademark Office (the "PTO"), nor am I familiar with the PTO

proceedings and procedures to obtain a patent. When Quickie needed patent counsel to pursue a patent on the Quickie Device, I thus recommended that Dr. Colvin contact Todd Sharinn, who was referred to me through a mutual friend. At that time, Mr. Sharinn was practicing law at Pepe Hazard LLP ("Pepe").

4. Although I had periodic interactions with Mr. Sharinn due to the overlapping issues between his efforts to obtain a patent for the Quickie Device and my discussions with Medtronics concerning their interest in licensing whatever patent Quickie may obtain, in no way did I oversee, supervise, or direct Mr. Sharinn's work. As discussed previously, I am not a patent attorney, and thus I relied upon Mr. Sharinn's patent expertise to handle all aspects of the '160 Patent.

5. On or about May 30, 2000, I received a letter from Sharinn stating that the PTO had granted a patent for the Quickie Device (the "'160 Patent'"). [Mov. Ex. U.] In that letter, Mr. Sharinn stated that periodic fees would need to be paid to the PTO to maintain the '160 Patent, and that he would monitor the deadlines for paying those fees and notify Quickie before the fees were due. As a member of Quickie as well as Quickie's attorney, I relied upon Mr. Sharinn's patent expertise and his promise to provide notice before the fees were due to be paid, and thus I did not separately calendar those deadlines myself.

6. In approximately May 2001, Sharinn left Pepe to join Greenberg Traurig LLP ("GT"). At that time, Quickie had a good working relationship with Mr. Sharinn and wanted him to continue as Quickie's attorney after he left Pepe. I thus sent a letter to Pepe on May 14, 2001, directing Pepe to transfer all of Quickie's files to Mr. Sharinn at GT's offices in New York City, including all files concerning the '160 Patent. [Resp. Ex. L]. In light of the file transfer and the fact that GT thereafter billed Quickie for legal work related to the '160 Patent, I

understood and expected that Sharinn would continue to monitor maintenance fee deadlines on the '160 Patent even after he joined GT.

7. Significantly, neither Sharinn nor GT ever told me or Quickie that GT did not intend to honor Sharinn's prior promise to monitor and provide advance notice of the '160 Patent maintenance fee deadlines. Quite the contrary, Mr. Sharinn and GT acknowledged that responsibility by directing a GT docketing clerk to enter the maintenance fee deadlines in GT's internal calendaring systems. GT and Mr. Sharinn further confirmed their responsibility for handling maintenance fees on the '160 Patent when they sent me a copy of the notice they filed with the PTO on December 16, 2002, stating that all correspondence concerning maintenance fees on the '160 Patent should be delivered to Sharinn at his GT office in New York City (the "Fee Address Notice"). [Resp. Ex. M]. As such, not only was Quickie reasonably relying on Sharinn and GT to monitor and provide notices of the deadlines, GT and Sharinn were both fully aware that they were being relied upon to perform that critical function.

8. When Quickie learned that Medtronics and other medical device manufacturing companies were selling products that infringed on the '160 Patent, Quickie asked Sharinn to investigate a potential infringement action against Medtronics. Shortly thereafter, Quickie expanded its relationship with Sharinn and GT to include bringing a patent infringement lawsuit against Medtronic. Sharinn was not yet a partner at GT, however, so he stated that he would ask Paul Sutton to act as the lead partner in charge of the engagement, and that Mr. Sutton would oversee Mr. Sharinn's work on the litigation.

9. Despite those statements, however, Sutton did not attend the Markman hearing in the Medtronics Litigation. While Mr. Sutton's failure to appear obviously put a lot of pressure on Sharinn to handle the hearing by himself, he performed well and, in the end, the Court issued

a Markman opinion that was very favorable to Quickie. Despite that success, however, Quickie still had concerns about Mr. Sutton's failure to appear and GT's commitment to the litigation and to Quickie. In light of those concerns, Drs. Colvin and Galloway decided to transfer the litigation to Mark Evens ("Evens") at Thelen, Reid & Priest LLP ("Thelen") in approximately October 2002. [Resp. Exs. A-E]. Mr. Evens was referred to Quickie by Dr. Colvin, who was his brother-in-law.

10. By that point I had developed a personal relationship with Mr. Sharinn, so I called him in early October 2002 to tell him about Quickie's decision to transfer the litigation to Thelen. In that conversation, which was solely between myself and Mr. Sharinn and no other person, I told Todd that Quickie had decided to transfer the Medtronic litigation to Thelen, but that Quickie wanted GT to continue to act as Quickie's patent counsel for various other patent applications pending on behalf of Quickie. I followed that conversation up with a letter dated October 15, 2002, to Mr. Sharinn in which I formally informed him of the decision to transfer the Medtronics litigation to Thelen, but stated that Quickie would continue to rely upon GT to "handle various patent applications pending on behalf of Quickie." [Mov. Ex. W].

11. I am aware that Mr. Sharinn now says that I told him that all Quickie matters were being transferred to Thelen, but that is simply not the case. First, I never told Mr. Sharinn that he was being fired from all Quickie matters. Secondly, the letter I sent to Mr. Sharinn on October 15, 2002, clearly states that Thelen was being substituted for GT in connection with "the above referenced litigation" against Medtronics, but that Mr. Sharinn and GT would continue to handle various patent applications for Quickie. [Mov. Ex. W]. Third, Mr. Sharinn's assertion that he was totally relieved of all responsibility for the '160 Patent is contradicted by the Fee Address Notice wherein he notified the PTO on December 16, 2002 – approximately two months *after* he

claims to have been fired – that he was to receive all maintenance fee-related correspondence concerning the ‘160 Patent. [Resp. Ex. M]. Finally, GT and Sharinn continued to bill Quickie for work legal work on the ‘160 Patent well after October 2002. *See, e.g.*, [Mov. Ex. AM]; [Resp. Ex. N].

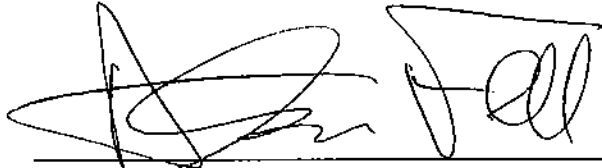
12. When Medtronic commenced proceedings asking the PTO to redefine the ‘160 Patent in a way that would absolve Medtronics of any infringement liability (the “Reexamination Proceedings”), Quickie and Thelen expanded their engagement to authorize Thelen to represent Quickie before the PTO. In that regard, Thelen asked Quickie to execute a document that Thelen needed to file with the PTO to permit Thelen to represent Quickie in connection with the Reexamination Proceedings (the “Reexamination Power of Attorney”). [Resp. Ex. G].

13. On approximately May 19, 2003, Mr. Sharinn sent me a fax to say that he had been notified that the Reexamination Power of Attorney had been “filed in connection with the above-referenced re-examination application.” [Mov. Ex. AF]. Continuing, Mr. Sharinn stated that, in light of that notice, neither he nor GT would take any “further action on this matter,” referring back to the Reexamination Proceedings. [Mov. Ex. AF]. Mr. Sharinn further stated that he would separately send a final bill for the client/matter number 51822.010900, which was GT’s internal billing number to refer to the Reexamination Proceedings. [Mov. Ex. AF].

14. As discussed previously, by the time I received Mr. Sharinn’s May 15, 2003 correspondence I had already told Mr. Sharinn that Thelen would handle the Medtronic Litigation and the Reexamination Proceedings, and that GT would continue to act as Quickie’s counsel for all other aspects of the ‘160 Patent. I thus understood Mr. Sharinn’s correspondence to confirm, as we had previously discussed, that neither he nor GT would take any further actions with respect to the Reexamination Proceeding.

15. Moreover, in May 2003 Mr. Sharinn and GT continued to be the designated recipient of all maintenance fee-related PTO correspondence concerning the '160 Patent and, as discussed previously, they were fully aware that Quickie was relying on them to ensure that the maintenance fees were timely paid. [Resp. Ex. M]. There is no suggestion whatsoever in Mr. Sharinn's May 15, 2003 correspondence that they were going to do otherwise, so I reasonably expected them to honor their commitments to monitor and provide notice of the maintenance fee deadlines. As a result, there was no need to write back to Mr. Sharinn or GT to confirm that Quickie still expected them to honor their prior commitments.

Dated: August 25, 2008  
New York, New York

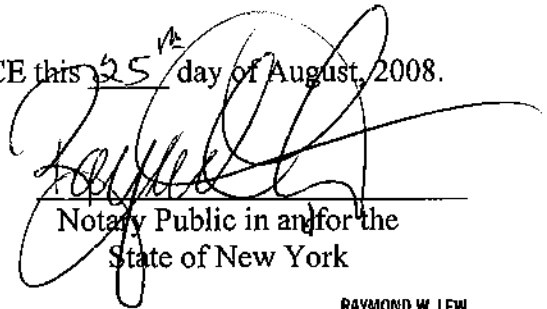
  
Alan Fell

STATE OF NEW YORK

COUNTY OF New York

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Alan Fell known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they have read the foregoing instrument, and that they executed the same for the purposes and consideration therein expressed in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25<sup>th</sup> day of August, 2008.

  
Notary Public in and for the  
State of New York

My commission expires:  
\_\_\_\_\_

RAYMOND W. LEW  
Notary Public, State of New York  
No. 02LEG074045  
Qualified in Queens County  
Commission Expires May 6, 2010

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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QUICKIE, LLC,

Plaintiff

- against -

GREENBERG TRAURIG, LLC,

Defendant

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07-cv-10331 (RMB)(DFE)

ECF CASE

**DECLARATION OF AUBREY C. GALLOWAY, M.D.**

1. I am Director of the Cardiothoracic Surgery Residency program, the Seymour Cohn professor of Cardiothoracic Surgery, and Chairman of the Department of Cardiothoracic Surgery at NYU Langone Medical Center. I am also a member of and managing partner for Quickie LLC ("Quickie"). I am over the age of 21 years, am of sound mind, and have never been convicted of a felony or crime of moral turpitude. This declaration is based on my personal knowledge and experience, as well as my review of relevant documents. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

2. Quickie is a limited liability corporation established to hold valuable intellectual property developed by several cardiac surgeons, including myself, who are on staff at the NYU Langone Medical Center. At its inception, Quickie retained Alan Fell ("Mr. Fell") as its outside counsel to handle various legal and business matters for Quickie. For example, Quickie looked to Mr. Fell as a transactional attorney to handle negotiations with entities who were interested in licensing Quickie's intellectual property. While Mr. Fell is very experienced and skilled in handling business negotiations, his expertise does not include the pursuit of patent applications and other patent proceedings before the United States Patent and Trademark Office (the "PTO").

Quickie therefore hired other outside counsel to handle the pursuit and maintenance of intellectual property matters.

3. In November 1998, Quickie retained Todd Sharinn ("Sharinn") and the law firm for which he was employed, Pepe & Hazard LLP ("Pepe"), to pursue a patent application for a device known as the "Passive Knotless Suture Terminator for use in Minimally Invasive Surgery and to Facilitate Standard Tissue Securing" for use in heart surgeries (the "Quickie Device"). [Resp. Ex. J]. Sharinn was the Pepe attorney-in-charge of the representation for the inventors of the Quickie Device, and he filed the Quickie Device patent application with the PTO on November 23, 1998. [Resp. Ex. K].

4. On May 30, 2000, Quickie received correspondence from Sharinn stating that the United States Patent and Trademark Office (the "PTO") had approved the '160 Patent Filing. [Mov. Ex. U]. In that correspondence, Mr. Sharinn stated that "we will notify you regarding payment of the maintenance fees several months before they are due," which I understood to mean that Quickie's attorney, Mr. Sharinn, would monitor the deadlines for payment of maintenance fees on the '160 Patent and provide notice before those fees were due to be paid. [Mov. Ex. U].

5. In approximately May 2001, Mr. Sharinn left Pepe to join Greenberg Traurig, LLP ("GT"). At that time, Quickie and Mr. Sharinn agreed that he would continue to act as Quickie's attorney with respect to the '160 Patent, and thus Quickie instructed Pepe to transfer all files related to the '160 Patent to GT. [Resp. Ex. L]. When Quickie and Sharinn agreed that he would continue as Quickie's counsel after the transfer to GT, I understood that Sharinn would continue to monitor and provide notice of the deadlines for payment of maintenance fees on the '160 Patent, and neither Mr. Sharinn nor anyone else at GT stated otherwise. My understanding



that GT and Mr. Sharinn would continue to monitor the maintenance fee deadlines was based upon Mr. Sharinn's correspondence to Quickie [Mov. Ex. U] as well as the fact that Mr. Sharinn had instructed a GT docketing clerk to enter the '160 Patent maintenance fee deadlines in GT's calendaring systems.

6. My understanding that Mr. Sharinn would continue to be Quickie's counsel after he moved to GT, with responsibility for monitoring and paying maintenance fees on the '160 Patent, was further based upon the notice Sharinn filed with the PTO on December 16, 2002, a copy of which was provided to Quickie, stating that all correspondence concerning maintenance fees on the '160 Patent should be delivered to Sharinn at his GT office in New York City (the "Fee Address Notice"). [Resp. Ex. M].

7. Shortly thereafter, Quickie learned that Medtronic, LLC ("Medtronic") and other medical device manufacturing companies were selling products that infringed on the '160 Patent. Accordingly, Quickie retained Sharinn and GT to bring a patent infringement lawsuit against Medtronic. At the time of that engagement, Sharinn was not a partner at GT, so Quickie had some concern that Sharinn may not have enough experience to be able to effectively handle a trial of that magnitude. Quickie's concerns were alleviated, however, when Paul Sutton ("Sutton") was brought onto the case to act as the lead partner in charge of the engagement.

8. Sharinn and Sutton were initially responsive to Quickie's needs and they aggressively pursued the litigation against Medtronic. However, Quickie's concerns about Sharinn's experience resurfaced when Sutton failed to appear for the Markman hearing on September 4, 2002. In the end the Markman hearing turned out to be very favorable to Quickie's claims against Medtronic, and I had no complaints about Sharinn's performance to that point. Nevertheless, Sutton's failure to appear for the hearing, despite having billed Quickie for time

preparing for the hearing, caused Quickie to be concerned about the future handling of this significant piece of litigation.

9. In part as a result of those concerns about GT's commitment to fully staff and pursue the infringement litigation against Medtronic, Quickie decided to transfer the litigation to Mark Evens ("Evens") at Thelen, Reid & Priest LLP ("Thelen") in approximately October 2002. [Resp. Exs. A-E]. Mr. Evens was the brother-in-law of Dr. Stephen Colvin who was one of the co-inventors of the Quickie Device and a member of Quickie.

10. Despite Quickie's hiring of Thelen to take over the Medtronic Litigation, for several reasons I continued to understand and expect that GT would serve as Quickie's counsel in connection with all other aspects of the '160 Patent, including monitoring and payment of maintenance fees. First, I expected Mr. Sharinn to continue to act as Quickie's attorney in that capacity in light of his written promise [Mov. Ex. U] to monitor the deadlines and provide notice before the maintenance fees were due and the fact that neither Mr. Sharinn nor anyone else at GT notified Quickie that they did not intend to continue in that engagement after Thelen was hired. Second, I expected Mr. Sharinn and GT to continue in that capacity as Quickie's attorney after reviewing a copy of the Fee Address Notice in which Mr. Sharinn and GT notified the PTO that they were to receive all correspondence concerning maintenance fees on the '160 Patent. [Resp. Ex. M]. Third, my expectation that Sharinn and GT would continue to act as Quickie's attorney for all non-litigation aspects of the '160 Patent was based upon the fact that Quickie continued to receive and pay GT's bills for services related to the '160 Patent even after Thelen was hired to take over the Medtronic Litigation. [Resp. Ex. N]. In short, Quickie's expectation that Sharinn and GT would continue to act as Quickie's attorney with respect to the monitoring and payment of maintenance fees on the '160 Patent after the Medtronic Litigation was transferred to Thelen

was entirely based upon communications by, and documents received from, Sharinn and GT, as well as the fact that nobody from GT ever notified Quickie that they would not continue to act in that capacity as Quickie's counsel.

11. In approximately late November or early December 2002, Quickie learned that Medtronic had commenced reexamination proceedings before the PTO in an effort to limit the scope of the '160 Patent in a manner that would allow Medtronic to continue marketing its products without infringing on the '160 Patent (the "Reexamination Proceedings"). At that same time, Quickie and Thelen expanded their engagement to authorize Thelen to represent Quickie before the PTO. I was asked to sign, and did sign, a document that Thelen needed to file with the PTO to permit Thelen to represent Quickie in connection with the Reexamination Proceedings (the "Reexamination Power of Attorney"). [Resp. Ex. G].

12. At no time prior to commencement of this litigation did Sharinn, Sutton, or anyone else at GT notify Quickie that they were going to stop monitoring the maintenance fee deadlines and remove the '160 Patent from their GT's calendar system after receiving notice that the Reexamination Power of Attorney had been filed with the PTO. Nor did Quickie receive a copy of any PTO filing by Sharinn, Sutton, or GT stating that GT and Sharinn were revoking the Fee Address Notice. In fact, Quickie first learned that GT had unilaterally removed the '160 Patent from its calendar docketing system during discovery in this litigation.

13. Even after Thelen filed the Reexamination Power of Attorney, Quickie continued to expect Sharinn and GT to act as Quickie's counsel for all aspects of the '160 Patent other than the Medtronics Litigation and the Reexamination Proceedings. That understanding was based upon several factors. First, Quickie relied on Sharinn's written promise to provide notice of the maintenance fees becoming due [Mov. Ex. U]. Second, Quickie relied upon its knowledge that

GT had entered the maintenance fee deadlines in its internal calendaring systems. Third, Quickie relied upon the Fee Address Notice that Sharinn filed with the PTO and copied to Quickie [Resp. Ex. M]. Fourth, Quickie relied upon the fact that GT and Sharinn continued to represent Quickie in connection with other intellectual property in addition to the '160 Patent. Fifth, Quickie relied upon the fact that it never received any notice whatsoever from Sharinn, Sutton, or anyone else at GT stating that GT had unilaterally decided to stop monitoring the '160 Patent after receiving the Reexamination Power of Attorney.

14. Quickie first learned that the '160 Patent had expired due to the failure to pay maintenance fees when St. Jude Medical, a large medical device company, pulled out of negotiations to license the '160 Patent from Quickie. [Resp. Ex. O, point #5]. Upon confirming that the '160 Patent had indeed expired, Quickie retained Timothy Maier of the law firm, Maier & Maier LLC, to represent Quickie in petitioning the PTO to reinstate the patent. Quickie was referred to Mr. Maier and his firm by Mark Evens who, after leaving Thelen and joining the law firm of Stern, Kessler, Goldstein & Fox PLLC ("Stern Kessler"), was unable to continue representing Quickie in the Medtronics Litigation and the Reexamination Proceedings because Stern Kessler represented Medtronics in unrelated intellectual property matters.

15. As part of Mr. Maier's efforts to obtain reinstatement of the '160 Patent, I was asked to execute a declaration describing Quickie's retention of outside counsel to monitor the '160 Patent to ensure that the maintenance fees were paid. [Mov. Ex. F]. Due to my surgery schedule and the urgent need to get Quickie's reinstatement application on file with the PTO, however, I was not able to review the declaration prior to the deadline to file the reinstatement application. As such, I authorized my assistant, Sondra Ortiz, to sign the declaration on my behalf, in the expectation that it was accurate and complete.

16. It was only after my declaration had been filed that I learned that, while accurate, it was incomplete in that it did not fully describe my expectations of Quickie's outside counsel as concerns the '160 Patent. I thus testified in my deposition in this litigation that the declaration was incomplete. [Resp. Ex. P, p. 82, line 20 – p. 83, line 9]. Specifically, while it was true that Quickie was relying on Thelen to monitor and pay maintenance fees on the '160 Patent in conjunction with its representation of Quickie in the Reexamination Proceedings, Quickie continued to expect Mr. Sharinn and GT to honor their commitments to monitor the '160 Patent and provide notice of the maintenance fee deadlines shortly before they were due. As described previously, that expectation was based upon documents and communications received from Mr. Sharinn and GT. [Resp. Exs. L-N and Mov. Ex. U].

17. Shortly thereafter, the PTO ruled on the reinstatement application and, in so doing, made clear that it was relying on an incomplete presentation of the facts concerning Quickie's efforts to ensure that the '160 Patent maintenance fees were timely paid. Quickie thus filed a motion asking the PTO to reconsider that decision. [Resp. Ex. Q]. In that motion, Quickie clarified that while Thelen was in fact Quickie's authorized representative in connection with the Reexamination Proceedings, Quickie nevertheless had every reason to expect GT and Mr. Sharinn to continue to monitor the maintenance fee deadlines and provide notice shortly before those fees were due to be paid. [Resp. Ex. Q, pps. 3 - 4].

18. At or about that same time, I learned that Mr. Sharinn had submitted a false declaration in support of the reinstatement application, in which he asserted that his responsibility for payment of the '160 Patent maintenance fees expired upon the filing of the Reexamination Power of Attorney, presumably in an effort to clear himself of any responsibility for expiration of the '160 Patent. I was not pleased when I learned that Mr. Sharinn's false

affidavit had been submitted to the PTO in support of Quickie's reinstatement application. However, at that time I also knew that it was pointless to ask Mr. Sharinn to re-submit an accurate declaration because Quickie had made multiple attempts to discuss these issues with GT and Sharinn, only to be rebuffed at every attempt.

19. Not only did Quickie attempt to engage GT and Sharinn in discussions concerning expiration of the '160 Patent, Quickie also asked GT to provide documents for filing with the PTO to show that GT was in fact monitoring the maintenance fee deadlines for the '160 Patent as Quickie expected it to do. Despite multiple such requests, however, GT refused to produce any documents or assist in Quickie's efforts to reinstate the '160 Patent. As a result, Quickie was unable to provide the PTO with documents showing that GT had calendared the maintenance fee deadlines. Quickie was also unable to show the PTO that Quickie was completely unaware that GT had unilaterally decided to remove those calendar entries without any notice whatsoever to Quickie. As a result, Quickie's efforts to reinstate the '160 Patent were unsuccessful. GT's and Sharinn's flat-out refusal to assist Quickie in seeking reinstatement of the '160 Patent leads to only one conclusion: despite having received thousands of dollars in fees from Quickie for obtaining and overseeing the '160 Patent, Sharinn and GT have wiped their hands of Quickie in an attempt to place the entire blame for the '160 Patent's expiration at Thelen's and Mr. Fell's feet.

20. When the '160 Patent expired, Quickie was no longer able to pursue litigation in an effort to require Medtronic and other medical device manufacturers to pay royalties for their use of Quickie's intellectual property. As a result, Medtronic and other companies continue to market devices using Quickie's intellectual property to this day. Were it not for GT's and Mr. Sharinn's promise to monitor the '160 Patent and provide notice before the maintenance fees

were due – promises which neither GT nor Sharinn ever told Quickie they had no intention of honoring – the '160 Patent would be alive today and Quickie would be earning royalties on Medtronic's and other companies' use of the Quickie Device.

Dated: August 25, 2008  
New York, New York

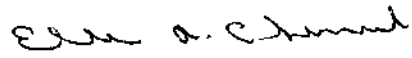
  
Aubrey C. Galloway, M.D.

STATE OF NEW YORK

COUNTY OF NY

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Aubrey C. Galloway known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they have read the foregoing instrument, and that they executed the same for the purposes and consideration therein expressed in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 25 day of August, 2008.

  
Notary Public in and for the  
State of New York

My commission expires:  
06/05/11

**ELLEN R. CHERRICK**  
Notary Public, State of New York  
No. 31-02CH4951914  
Qualified in New York County  
Commission Expires June 5, 2011

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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QUICKIE, LLC,

Plaintiff

- against -

GREENBERG TRAURIG, LLC,

Defendant

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07-cv-10331 (RMB)(DFE)

ECF CASE

**DECLARATION OF ROBERT E. KREBS**

1. I am a partner in the San Jose, California, office of Thelen, Reid, Brown, Raysman & Steiner, L.L.P. ("Thelen"). This declaration is based on my personal knowledge and experience, as well as my review of relevant documents. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

2. On July 3, 2002, Quickie, LLC ("Quickie") retained Thelen, and in particular Mark Evens, to provide "litigation services related to the Quickie, LLC legal action against Medtronic, Inc." Exhibit A. From time to time thereafter, Mark Evens asked for my assistance and assistance of associate attorneys in the San Jose office in the representation of Quickie. At first, Greenberg Traurig, LLC ("Greenberg"), and in particular Paul Sutton and Todd Sharinn of that firm, also represented Quickie in the litigation as co-counsel. In or around October 2002, however, Quickie decided to replace Greenberg with Thelen as its counsel in the *Medtronic* litigation. Exhibit B. Accordingly, Mark Evens requested the litigation files from Greenberg, and asked Todd Sharinn to execute a Substitution of Counsel. Exhibit C.



3. On October 15, 2002, Paul Sutton sent Thelen the signed substitution of counsel. Exhibit D. On October 16, 2002, Greenberg transferred the litigation files to Thelen, which contained a copy from their files of the file history of the '160 Patent equivalent to the file history held by the United States Patent and Trademark Office (the "PTO"), prior art, and other documentation for the '160 Patent that was at issue in the litigation against Medtronic. Exhibit E.

4. The Greenberg file transfer letter specifically states that the files being transferred related to the *Medtronic* litigation, Greenberg matter number 010400. Exhibit E. Thelen requested the *Medtronic* litigation files solely so it could fully represent Quickie in connection with that litigation. Exhibit C. Quickie did not ask Thelen to take responsibility for prosecution or maintenance of the '160 Patent, and Greenberg did not transfer that responsibility, nor even its original file for the '160 Patent, to Thelen when it sent the *Medtronic* litigation files to Thelen. Indeed, after Greenberg transferred the *Medtronic* litigation files to Thelen, Todd Sharinn notified the PTO, pursuant to 37 C.F.R. 1.363(a)(3), that he was to receive all correspondence concerning maintenance fees on the '160 Patent. Exhibit F.

5. On November 25, 2002, following a *Markman* ruling favorable to Quickie, Medtronic filed a request that the PTO reexamine the '160 Patent. When the PTO granted Medtronic's reexamination petition on January 15, 2003, Quickie asked Thelen to represent it in the resulting '160 Patent reexamination proceedings before the PTO, which was perfectly sensible since the reexamination was simply an adversarial offshoot of the *Medtronics* litigation, involving many of the same issues relating to the prior art.

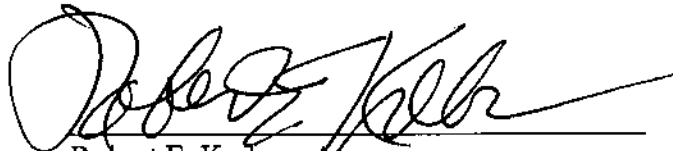
6. Shortly thereafter and as a result of discussions with the PTO, I was asked to review and sign a form for Revocation of Prior Powers of Attorney and New Power of Attorney (the "Reexamination Power of Attorney") that explicitly displayed the "CONTROL NO." for the reexamination to ensure that I and other Thelen attorneys were recognized by the PTO as Quickie's authorized representatives in connection with reexamination of the '160 Patent. Exhibit G. On March 17, 2003, Thelen filed the Reexamination Power of Attorney with the PTO, along with a Change of Attorney Docket Number and Change of Address Notice (Exhibit H) to ensure that Thelen received all PTO communications concerning the reexamination.

7. The Reexamination Power of Attorney did not affect Greenberg's ongoing responsibility for maintenance fees on the '160 Patent, and any interpretation of that document to the contrary is unsubstantiated. None of the documents that Thelen filed in the PTO on March 17, 2003 (the Reexamination Power of Attorney, the Change of Attorney Docket Number, or the Change of Address Notice), mentioned maintenance fees, had any effect whatsoever on the address for maintenance fee correspondence, or indicated that Thelen was taking responsibility in any way for any action whatsoever in connection with payment of maintenance fees on the '160 Patent. Moreover, at no time did I or anyone else at Thelen notify the PTO that Thelen was to receive correspondence concerning maintenance fees on the '160 Patent.

8. Indeed, neither the Reexamination Power of Attorney nor any of the other documents Thelen filed in the PTO on March 17, 2003 appear at all in the file history for the '160 Patent. Instead, those documents are only found in the '160 Patent reexamination file because, as the prominent "CONTROL NO." on the documents makes clear, they relate only

to the reexamination (90/006,460), not to the original '160 Patent application (09/198,087). Exhibits G & H. In fact, when Mark Evens sought Quickie's execution of the Reexamination Power of Attorney, he specifically stated that it was a form "for filing with the PTO" so Thelen could "represent Quickie in the Re-Exam." Exhibit I.

Dated: August 4, 2008  
San Jose, California



Robert E. Krebs

# **EXHIBIT A**

07/31/2002 12:05 FAX 212 422 0168  
07/31/2002 16:07 FAX

RICK STEINER SEGAL FELL

0003  
0062

## THELEN REID & PRIEST LLP

ATTORNEYS AT LAW

NEW YORK  
WASHINGTON, D.C.  
MORRISTOWN, N.J.

MARKET SQUARE, SUITE 800  
701 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004-2606  
TEL (202) 508-4000 FAX (202) 508-4321  
www.thelenreid.com

SAN FRANCISCO  
LOS ANGELES  
SILICON VALLEY

July 3, 2001

Alan Fell, Esq.  
Rick, Steiner, Segal & Fell, P.C.  
Three New York Plaza  
New York, NY 10004

Re: Representation of Quickie, LLC

Dear Mr. Fell:

We would like to welcome Quickie, LLC as a client of Thelen Reid & Priest LLP. Our team is very excited about working with Quickie, LLC. We have found that it is important to express as clearly as possible our expectations and intentions when taking on a new legal representation. For that reason, and also because the law requires us to put certain information in a written agreement with clients, we have prepared this letter agreement and enclosed a statement of our Billing and Payment Policies.

We have already discussed the nature of legal services for which you have retained our firm. So that we have a common understanding about the scope of our legal representation, we would like to set out briefly here what you have asked us to do: Provide litigation services related to the Quickie, LLC legal action against Medtronic, Inc.

Our fees for our legal services are based primarily on the value of the actual time spent on any particular matter by the attorneys and legal assistants performing the services. Our billing rates for attorneys and legal assistants vary according to their experience and expertise. As discussed with you, I will be the principal attorney involved in this matter. My billing rate is \$450 per hour. In addition, I may rely on other partners and associates to assist me in this matter, as needed. Richard Taffet, Robert Krebs, Jeffrey Gans may work on this matter. Their rates are \$495, \$435, and \$305 respectively. These rates are generally adjusted on a yearly basis. If it is necessary and appropriate, we also may use other attorneys and paralegals for this representation.

In addition to legal fees, we charge for other costs incurred by us on your behalf, including telephone charges, photocopying costs, postage, computerized research, secretarial overtime, word processing costs, meals, cabs and travel expenses.

As a condition of your becoming and continuing as a client of our firm, we request that you agree to the enclosed Billing and Payment Policies. Please confirm your agreement by executing the enclosed copy of this letter in the space provided and returning it to me.

DCW118303 v1

07/31/2002 12:05 FAX 212 422 0158

RICK STEINER SEGAL FELL

004

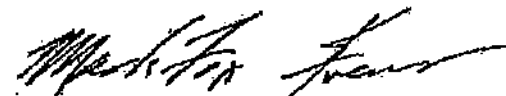
THELEN REID & PRIEST LLP

Alan Fell, Esq.  
Rick, Steiner, Segal & Fell, P.C.  
July 3, 2002  
Page 2

Naturally, we trust and hope that you will be satisfied with our services and will return to us for your future legal needs. If you request additional services from us in the future which are either related or unrelated to the scope of the representation described above, it is understood that those future legal services will be provided by us under the same billing and payment terms as are set forth in this letter and the attachment.

On behalf of our entire firm, we thank you for the confidence you have shown in us by retaining Thelen Reid & Priest LLP. We look forward to working with you.

Sincerely,

  
Mark Fox Evens

The foregoing is agreed to:

QUICKIE, LLC

By: 

07/31/2002 12:05 FAX 212 422 0158

RICK STEINER SEGAL FELL

0003

**THELEN REID & PRIEST LLP**

Alan Fell, Esq.  
 Rick, Steiner, Segal & Fell, P.C.  
 July 3, 2002  
 Page 3

**BILLING AND PAYMENT POLICIES**  
**of**  
**THELEN REID & PRIEST LLP**

**1. Fees for Legal Services.**

Unless otherwise agreed, the fees for our legal services will be based on the number of hours worked multiplied by the hourly rates then in effect for the attorneys, legal assistants and other persons on our staff performing the services.

Our firm may utilize attorneys, legal assistants and other staff in a manner which we believe will best serve a client's requirements consistent with providing the proper level of skill and experience at the most reasonable costs. Our schedule of hourly rates for attorneys, legal assistants and other members of the professional staff is based upon years of experience, specialization and level of professional attainment.

Currently, our rates are \$150-\$570 per hour for attorneys and from \$95-\$210 per hour for law clerks and legal assistants. The current rates for Mark P. Evens, Richard Taffet, Robert Krebs, Jeffrey Gans, who will be working on the matter are \$450, \$495, \$435, and \$305 respectively.

We are sometimes requested by clients to give estimates of fees and costs that we expect to be incurred in connection with a specific matter. While we will work closely with clients on budgets for matters, clients should be aware that estimates and budgets are by their nature imprecise and are subject to unforeseeable future events. Unless we have expressly agreed to a fixed fee or maximum fee to be charged or other billing arrangement, the actual amounts billed may be different from estimated or budgeted amounts.

**2. Other Charges.**

Non-fee charges are separately itemized on our statements in accordance with the attached schedule. In cases where costs incurred for outside materials or services exceed \$200, we may forward the vendors' statements directly to our client for payment with the understanding that they will be discharged promptly. As a result of billing delays by outside vendors, some charges may be billed later than the period in which the corresponding legal services were rendered.

**3. Revisions to Fees for Legal Services and Non-Fee Charges.**

Our rates and non-fee charges are reviewed periodically and adjusted from time to time. It is not the policy of the firm to send out a schedule to each client every time our rates or non-fee charges are adjusted, and we reserve the right to adjust rates and charges in a reasonable manner.

07/31/2002 12:06 FAX 212 422 0158

RICK STEINER SEGAL FELL

0003

**THELEN REID & PRIEST LLP**

Alan Fell, Esq.  
Rick, Steiner, Segal & Fell, P.C.  
July 3, 2002  
Page 4

without prior notice. Unless otherwise agreed, the rates that are being charged for all personnel will be reflected in the invoices itemizing our charges.

**4. Insurance Coverage.**

Unless otherwise agreed in writing, you will be responsible for paying your invoices directly in accordance with these billing and payment policies. In the event you have insurance coverage for our fee and/or non-fee charges, you will be responsible for seeking reimbursement from your insurer(s). If you retain us to attempt to obtain insurance coverage for a legal matter we are handling on your behalf, we will represent you in seeking to obtain insurance reimbursement for our fee and non-fee charges, but you will remain responsible for direct payment of all invoices. If you do not retain us to attempt to obtain insurance coverage for a legal matter we are handling on your behalf, we will cooperate with any reasonable requests for billing and payment information you may require in connection with any independent efforts you may make to obtain insurance coverage for our fee and non-fee charges, but you will remain responsible for direct payment of all invoices.

**5. Monthly Statements Due Upon Receipt.**

Our statements generally will be prepared and mailed during the month following the end of the month in which the services are rendered. Statements are due upon receipt. In litigation matters in which we prosecute monetary claims on the client's behalf, we shall have a lien on the proceeds from those claims to the extent of any unpaid fees or other charges, and such lien shall attach to any judgment, settlement or other recovery obtained by the client on those claims.

**6. Past Due Amounts.**

To avoid burdening those clients who pay their statements promptly with higher fees to reflect the added costs we incur as a result of clients who are delinquent, a monthly service charge of 10% per annum accruing from the due date may at our discretion be added to statements which remain unpaid for 30 days or more. In no event will the service charge be greater than the maximum rate permitted by any applicable law. In the unlikely event that we are required to institute legal proceedings to collect our fees or other amounts due to us, the prevailing party will be entitled to recover reasonable attorneys' fees (not to exceed \$40,000) and other costs of collection.

**7. Termination of Services.**

Our clients have the right to terminate our services at any time. We will have the same right, subject to any professional obligation to give a client reasonable notice to arrange alternative



07/31/2002 12:06 FAX 212 422 0158

RICK STEINER SEGAL FELL

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THELEN REID & PRIEST LLP

Alan Fell, Esq.  
Rick, Steiner, Segal & Fell, P.C  
July 3, 2002  
Page 5

representation and subject to the rules of any applicable court or tribunal. In the event of a termination of our services, the client will be obligated to pay for our fees and other charges incurred prior to the delivery of notice of termination.

**8. Arbitration.**

To the extent applicable, notice is given that New York law provides, with certain exceptions, that you have the right to arbitrate fee disputes if the amount of the dispute is between \$1,000 and \$50,000.

07/31/2002 12:00 FAX 212 422 0158

RICK STEINER SEGAL FELL

0008

**THELEN REID & PRIEST LLP**

Alan Fell, Esq.  
Rick, Steiner, Segal & Fell, P.C.  
July 3, 2002  
Page 6

**SCHEDULE OF CHARGES OTHER THAN**  
**FOR PROFESSIONAL SERVICES**

Copying	\$.18/page
Yalobinding	\$1.50 per bind
Facsimile	\$2.00/page (outgoing only)
Postage	No charge, except for unusually large mailings which are billed at U.S. Postal rates
Mileage	Internal Revenue Service standard mileage rate
Other Travel	At Cost
Airfare	Coach class for domestic flights, business class for international flights
Text editing	No charge
Telephone	No charge for local calls. Long distance calls at cost.
Computerized Legal Research	Billed at rates charged by computerized research vendors (e.g. Lexis, Westlaw)
Other Third-Party Charges	All other third-party charges (e.g., filing fees, expert witness fees, travel on client's behalf) are billed at the rates charged by these third-parties

# **EXHIBIT B**

**RICK, STEINER, SEGAL, FELL & BENOWITZ, P.C.**

ATTORNEYS AT LAW  
THREE NEW YORK PLAZA  
NEW YORK, N.Y. 10004  
TELEPHONE: (212) 422-0488  
FAX: (212) 422-0168

NEW JERSEY OFFICE  
111 PATERSON AVENUE  
HOBOKEN, N.J. 07030  
(201) 798-6613

October 15, 2002

HAND DELIVERY

Todd Sharian, Esq.  
Greenberg Traurig, LLP  
885 Third Avenue, Suite 2400  
New York, NY 10022

RE: Quickie, LLC v. Medtronic, Inc.  
Civil Action No. 02 CV1157 (GEL)

Dear Todd:

This letter will confirm our recent conversation concerning the above referenced matter. I am writing this letter as general counsel to Quickie, LLC.

You are aware that the firm of Thelen, Reid, Priest will be substituted for Greenberg Traurig in the above referenced litigation. You will arrange to have the files prepared to be picked up by Thelen Reid Priest. If you would let me know when the files are ready and how many boxes are included, I will arrange to have them picked up.

You and Greenberg Traurig will continue to handle various patent applications pending on behalf of Quickie, LLC and Quickievision, LLC.

I am aware that there are pending bills outstanding from your firm. Quickie will be making a payment today on account and intends to pay the entire balance by the end of this year. I am hoping that your firm will waive its usual requirement and release the files immediately.

I want to personally thank you for the superb job you have done in litigating this matter. The result of the Markman hearing was excellent.

All the best.

Sincerely,

ALAN FELL

AF:ags

cc: Stephen B. Colvin, M.D.

CCFV

EXHIBIT

22

6-10-08

QLLC 0098946

# **EXHIBIT C**

10/11/2002 17:21 FAX

001

\*\*\*\*\*  
 \*\*\* TX REPORT \*\*\*  
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TRANSMISSION OK

TX/RX NO 0752  
 CONNECTION TEL 34521#000002#12126882449  
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 RESULT OK

Thelen Reid &amp; Priest LLP

OCT 11 2002

FAXED

**THELEN REID & PRIEST LLP**  
 ATTORNEYS AT LAW

**Fax Cover Page**

JOB #

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 at (202) 508-4070

Market Square, Suite 800  
 701 Pennsylvania Avenue, N.W.  
 Washington, DC 20004

Phone ☎ (202) 508-4000  
 Fax 📠 (202) 508-4321  
[www.thelenreid.com](http://www.thelenreid.com)

**IMPORTANT:** This fax transmission is intended only for the addressee. It contains information from the law firm of Thelen Reid & Priest LLP which may be privileged, confidential and exempt from disclosure under applicable law. Dissemination, distribution, or copying of this by anyone other than the addressee or the addressee's agent is strictly prohibited. If this transmission is received in error, please notify Thelen Reid & Priest LLP immediately at the telephone number indicated above. We will reimburse your costs incurred in connection with this erroneous transmission and your return of these materials. **THANK YOU.**

ATTORNEY #	CLIENT-MATTER	RETURN TO	BOOK #
03477	034521/000002	Mark Fox Evens	

**Total Pages Sent: 3**  
 (including this page)

October 11, 2002

Via Fax Only

**To**

**Todd S. Sharinn,**  
**Greenberg Traurig**

**Fax:** 212 688-2449  
**Phone:** 212 801-2100

**From****Mark Fox Evens**

**Phone:** 202 508-4053  
**Email:** [mevens@thelenreid.com](mailto:mevens@thelenreid.com)  
**Direct Fax:**

**Message**

QLLC 0069674

THELEN REID & PRIEST LLP

ATTORNEYS AT LAW

NEW YORK  
WASHINGTON, D.C.  
MORRISTOWN, N.J.

MARKET SQUARE, SUITE 800  
701 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004-2608  
TEL (202) 508-4000 FAX (202) 508-4321  
www.rhelenreid.com

SAN FRANCISCO  
LOS ANGELES  
SILICON VALLEY

October 11, 2002

VIA FACSIMILE

Todd S. Sharinn, Esq.  
Greenberg Traurig, LLP  
885 Third Avenue  
New York, NY 10022-4834

Re: Transfer of Files  
*Quickie v. Medtronic*, Southern District of New York  
02 CIV. 1157 (GEL)

Dear Todd:

Pursuant to our telephone conversation this afternoon, I am formally requesting that you transfer all of the litigation files in the above-captioned action to our office in New York as soon as possible. The address is 40 West 57<sup>th</sup> Street. Please send the files to the attention of Shari Markowitz-Savitt, Esq. We also need any files related to negotiations on behalf of Quickie to license its intellectual property. You told me that any such files are contained in the litigation files, but I want to make sure that we have everything.

As we discussed, we would like to accomplish the file transfer as soon as next week as possible. You responded that you must comply with your firm's procedures. I understand that all firms have procedures for the transfer of files. However, recognizing your past relationship with the client and the continuing relationship, I trust that you will ensure an expeditious review so that we will receive all of the files no later than the end of next week. If, for some reason, you are unable to transmit the files, please notify me of any problems as soon as possible so that we can address the problems and obtain the files. I also understand that Dr. Colvin sent you a box of materials that he thought were pertinent. I would like those materials transmitted to our firm as soon as possible as well. Again, given your past relationship with the client, I trust transmittal of these files and documents will not be a problem.

Finally, we are sending over a stipulation to substitute our firm as counsel. Please execute the form and return it by messenger to Ms. Markowitz.

DC #130307 v1

QLLC 0069675

THELEN REID & PRIEST LLP

Todd S. Sharinn, Esq.

October 11, 2002

Page 2

If you have any questions, or if I can be of additional service, please do not  
hesitate to contact me.

Cordially yours,



Mark Fox Evens

cc: Alan Fell, Esq.  
Dr. Stephen Colvin



# **EXHIBIT D**

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Paul J. Sutton

Direct Dial  
(212) 801-2108

Email  
suttonp@gilaw.com

October 15, 2002

VIA FAX & FEDERAL EXPRESS

Mark Fox Evens, Esq.  
Thelen Reid & Priest  
Market Square, Suite 800  
701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2608

Re: Quickie v. Medtronic  
02 Civ. 1157 (GEL)

Dear Mark:

It was good to talk to you this afternoon, and this will re-confirm for your and TRP's records that I will facilitate the prompt transfer of relevant files relating to the above-referenced litigation to Shari at the New York office.

Mark, I am enclosing with this fax a copy of the Stipulation of substitution of counsel, which I have signed, and the original of which is being sent this afternoon to you via FedEx.

Finally, for the benefit of our mutual client, Quickie, I will try to make myself available to both you and Steve if you feel I can be of any help regarding either the prosecution of the litigation or any settlement negotiations that come up. Please send my regards to my friends at TRP. I referred a significant asbestos defense to TRP's Jon Siegfried last week, since our representation of the tobacco industry conflicts us out (as you know, a typical asbestos defense points to smokers and the industry). Best regards.

Cordially yours,

Paul J. Sutton  
Chairman, Patent Practice

pjs:sp\tr1\Evens  
Encl.

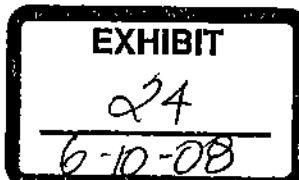
cc: Stephen B. Colvin, M.D.

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE

NEW YORK, NEW YORK 10022-4834

212-848-1000 FAX 212-688-2449 www.gilaw.com

NEW YORK MIAMI WASHINGTON, D.C. ATLANTA PHILADELPHIA TYSONS CORNER CHICAGO BOSTON PHOENIX WILMINGTON LOS ANGELES DENVER  
SAO PAULO FORT LAUDERDALE BOCA RATON WEST PALM BEACH ORLANDO TALLAHASSEE



QLLC 0069662

10/14/02 MON 10:34 FAX 212 603 2001

THELEN REID & PRIEST LLP

003

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

QUICKIE, LLC,

Plaintiff,

-against-

MEDTRONIC, INC.,

Defendant.

Civ. No.: 02 CV 1157 (GEL)

STIPULATION OF  
SUBSTITUTION OF COUNSEL

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned,  
that the attorneys of record for plaintiff Quickie, LLC in the above-entitled action be changed and  
that Thelen Reid & Priest LLP with offices located at 40 West 57<sup>th</sup> Street, New York, New York  
10019 be substituted for Greenberg Traurig, with offices located at 885 Third Avenue, New  
York, New York, New York 10022, as attorneys of record for such plaintiff herein.

Dated: New York, New York  
October 13, 2002

GREENBERG TRAURIG  
Outgoing attorneys for Plaintiff

By:

Paul J. Sutton (PS 8630)  
Todd S. Sharinn (TS 0581)  
885 Third Avenue  
Suite 2400  
New York, New York 10022  
(212) 801-9200

THELEN REID & PRIEST LLP  
Incoming attorneys for Plaintiff

By:

Shari Markowitz Savitt (SM 6366)  
40 West 57<sup>th</sup> Street  
New York, New York 10019-4097  
(212) 603-2000

and

Mark F. Evens  
Jeffrey Gans  
THELEN REID & PRIEST LLP  
Market Square  
701 Pennsylvania Avenue, N.W., Suite 800  
Washington, D.C. 20004

NY #493697 v1

QLLC 0069663

# **EXHIBIT E**

10/16/2002 16:43 GREENBERG/TRAURIG + 7764518224010400H2632246

NO. 954 0001



02 OCT 16 11:43:20

## Transmittal Cover Sheet

## TO

Name: Stephen B. Colvin, M.D.  
 Company:  
 Fax No.: (212) 263-2246  
 Phone No.:

Name: Mark Evens, Esq.  
 Company: Thelen Reid & Priest  
 Fax No.: (202) 508-4321  
 Phone No.:

Name: Alan Fell, Esq.  
 Company:  
 Fax No.: (212) 422-0158  
 Phone No.:

Name: Shari Markowitz-Savitt  
 Company: Thelen Reid & Priest  
 Fax No.: (212) 603-2001  
 Phone No.:

Name:  
 Company:  
 Fax No.:  
 Phone No.:

Name:  
 Company:  
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Name:  
 Company:  
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Name:  
 Company:  
 Fax No.:  
 Phone No.:

FROM Paul A. Juergensen

File Number 51822.010400

Comments

Date October 16, 2002

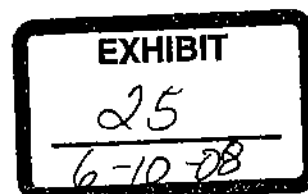
Time 3:47 PM

No. Pages Including this cover sheet 4

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The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the address below via the U.S. Postal Service. We will reimburse you for your postage. Thank you.

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QLLC 0098947

10/16/2002 16:43 GREENBERG/TRAURIG - 776H51B22#010400#26J2246

NO. 954 0002

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Paul A. Jurgensen  
212-801-3173  
jurgensa@ghw.com

October 16, 2002

VIA FACSIMILE

Shari Markowitz-Savitt  
Thelen Reid & Priest LLP  
40 West 57th Street  
New York, New York 10019

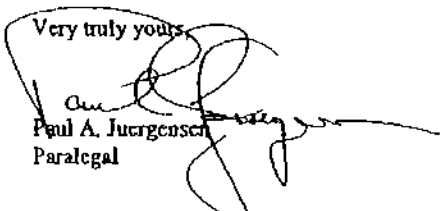
Re: Quickre, LLC v. Medtronic, Inc.  
Our Reference No.: 51822.010400

Dear Shari :

Confirming our conversation this afternoon, our files concerning the above-referenced matter are ready to be picked-up by your office. A copy of my cover letter accompanying the files is faxed herewith.

We understand that you are unable to pick-up these documents today, and that you may be sending a representative from your office to pick the files up tomorrow, depending upon the weather. Mr. Sutton has instructed me to get these documents into the hands of Mark Evens "pronto", so that we ask that you not delay picking them up as soon as possible. Please contact me in advance so that I know when someone will be here to pick-up the files.

Very truly yours,

  
Paul A. Jurgensen  
Paralegal

Enclosures  
(6 Boxes)

cc: Stephen B. Colvin, M.D.  
Mark Evens, Esq.  
Alan Fell, Esq.  
Paul J. Sutton, Esq.  
Todd S. Sharinn, Esq.

GREENBERG TRAURIG, LLP

885 THIRD AVENUE

NEW YORK, NEW YORK 10022-4834

212.801-3100 Fax 212-688-2449 www.ghw.com

ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

QLLC 0098948

10/16/2002

16:43

GREENBERG/TRAURIG + 776H51822H010400H2632246

NO. 954 0003

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Paul A. Jurgensen  
212-401-3173  
jurgenserp@glaw.com

October 16, 2002

**MESSENGER PICK-UP**

Shari Markowitz-Savitt  
Thelen Reid & Priest LLP  
40 West 57th Street  
New York, New York 10019

Re: Quickie, LLC v. Medtronic, Inc.  
Our Reference No.: 51822.010400

Dear Shari :

We enclose Greenberg Traurig's files concerning the above-referenced matter. These files include the following document types:

1. Correspondence;
2. Pleadings;
3. Transcripts;
4. General/Main File;
5. U.S. Patent No. 6,066,160 File History & Prior Art;
6. Slides - Markman Hearing;
7. Key Cases & Definitions Re: Markman Hearing;
8. Prototype Photos;
9. Medtronic Device;
10. Allan Katz Prototypes;
11. Medtronic Prototypes;

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE  
NEW YORK, NEW YORK 10022-4834  
212-501-2100 FAX 212-490-2449 www.glaw.com  
ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSON CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

QLLC 0098949

10/16/2002 16:43 GREENBERG/TRAURIG → 776H510224010400H2632246

NO. 954 0004

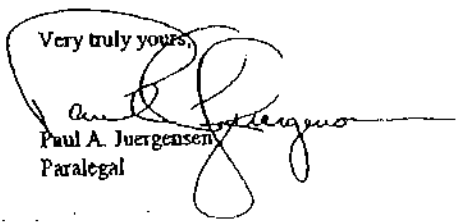
Shari Markowitz-Savitt  
October 16, 2002  
Page 2

12. Cases Re: Claim Construction;
13. Documents Produced by Quickie;
14. Documents Produced by Medtronic;
15. Attorney Work Files;
16. Patent Research/Searches; and
17. Original Documents from Quickie.

To the extent that we discover any additional materials, we will forward them immediately.

Please do not hesitate to call if you have any questions.

Very truly yours,

  
Paul A. Juergensen  
Paralegal

Enclosures  
(6 Boxes)

cc: Stephen B. Colvin, M.D.  
Mark Evens, Esq.  
Alan Fell, Esq.  
Paul J. Sutton, Esq.  
Todd S. Sharian, Esq.

GREENBERG TRAURIG, LLP

QLLC 0098950



# **EXHIBIT F**

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAUBIG**

02-10-15 10:10:11

**Transmittal Cover Sheet**

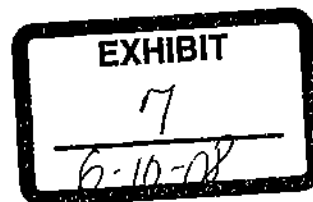
**TO** Marsha Twitty  
**Company** U.S. Patent and Trademark Office  
**Fax Number** 703-305-1013  
**Phone Number** 703-308-9692  
**FROM** Linda Garamone  
**File Number** 51822.010700  
**Comments** Change of Correspondence Address and Fee Address Indication Form

**Date** December 16, 2002  
**No. Pages** Including this cover sheet 4

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# MESSAGE CONFIRMATION

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DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
12/16	02'00"	7033051013	TX	004	OK 0000

12/16/2002 12:18 GREENBERG/TRAURIG → 51822H010700H17033051013 NO.964 0001

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

02 12/16/2002 11

## Transmittal Cover Sheet

<b>TO</b>	Marsha Twitty
<b>Company</b>	U.S. Patent and Trademark Office
<b>Fax Number</b>	703-305-1013
<b>Phone Number</b>	703-308-9692
<b>FROM</b>	Linda Garramone
<b>File Number</b>	51822.010700
<b>Comments</b>	Change of Correspondence Address and Fee Address Indication Form

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PTO/SB/123 (10-00)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>CHANGE OF CORRESPONDENCE ADDRESS</b> <b>Patent</b>  Address to: Assistant Commissioner for Patents Washington, D.C. 20231	Patent Number	6,066,160
	Issue Date	May 23, 2000
	Application Number	09/198,087
	Filing Date	November 23, 1998
	First Named Inventor	Colvin

Please change the Correspondence Address for the above-identified patent to:

☐ Customer Number  → Place Customer Number Bar Code Label here  
 OR  
☐ Type Customer Number here

Firm or Individual Name	Todd S. Sharinn				
Address	Greenberg Traurig, LLP				
Address	885 Third Avenue, 21st Floor				
City	New York	State	NY	ZIP	10022
Country	US				
Telephone	212-801-2157		Fax	212-688-2449	

This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

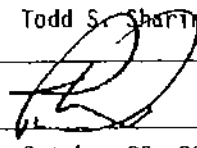
This form will not affect any "fee address" provided for the above-identified patent. To change a "fee address" use the "Fee Address Indication Form" (PTO/SB/47).

I am the:

☐ Patentee.

☐ Assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

☒ Attorney or agent of record.

Typed or Printed Name	Todd S. Sharinn
Signature	
Date	October 22, 2002

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of \_\_\_\_\_ forms are submitted.

Burden Hour Statement: This form is estimated to take 3 minutes to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

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**"FEE ADDRESS" INDICATION FORM**

Address to:  
 Assistant Commissioner for Patents  
 Box M Correspondence  
 Washington, D.C. 20231

**INSTRUCTIONS:** Only an address associated with a Customer Number can be established as the fee address for maintenance fee purposes (hereafter, fee address). A fee address should be specified when the patentee would like correspondence related to maintenance fees to be mailed to a different address than the correspondence address for the application. If there is a Customer Number already associated with the fee address for the patent or allowed application, check the first box below and provide the Customer Number in the space provided. If there is no Customer Number associated with the fee address for the patent or allowed application, you must check the second box below and attach a Request for Customer Number form (PTO/SB/125). For more information on Customer Numbers, see the Manual of Patent Examining Procedure (MPEP) Section 403.

Please recognize as the "Fee Address" under the provisions of 37 CFR 1.363 the following address associated with the following customer number:

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☐ Request for Customer Number (PTO/SB/125) attached hereto



in the following listed application(s) for which the Issue Fee has been paid or patent(s).

PATENT NUMBER (if known)	APPLICATION NUMBER
6,066,160	

(check one)

- ☐ Applicant/Inventor
- ☒ Attorney or agent of record 42,144  
(Reg. No.)
- ☐ Assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed enclosed. (Form PTO/SB/06)
- ☐ Assignment recorded at        Firm

Signature

Todd S. Sharinn

Typed or printed name

212-801-2157

Requester's telephone number

October 22, 2002


Date

**NOTE:** Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of        forms are submitted.

**Burden Hour Statement:** This collection of information is required by 37 CFR 1.363. This information is used by the public to submit (and by the USPTO to process) payment of patent maintenance fees. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 0.08 hours to complete, including gathering, preparing, and submitting the complete payment of maintenance fees. Time will vary depending on the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231

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<b>CERTIFICATE OF MAILING BY FIRST CLASS MAIL (37 CFR 1.8)</b>			Docket No. 51822.010700
Applicant(s): Colvin et al			
Serial No. 09/198,087	Filing Date November 23, 1998	Examiner Gary Jackson	Group Art Unit 3731
Invention: <b>PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN MINIMALLY INVASIVE SURGERY AND TO FACILITATE STANDARD TISSUE SECURING</b>			
<p>I hereby certify that this <u>Change of Correspondence Address, Fee Address Indication Form &amp; Post Card</u>  <small>(Identify type of correspondence)</small></p> <p>is being deposited with the United States Postal Service as first class mail in an envelope addressed to: The  Assistant Commissioner for Patents, Washington, D.C. 20231 on <u>October 22, 2002</u>  <small>(Date)</small></p> <p style="text-align: right;"> <u>Linda Garramone</u>  <small>(Typed or Printed Name of Person Mailing Correspondence)</small>    <small>(Signature of Person Mailing Correspondence)</small> </p> <p style="text-align: center;">Note: Each paper must have its own certificate of mailing.</p>			

POT/REV03

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# **EXHIBIT G**

Docket No. 034521-003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo  
CONTROL NO.: 90/006,460  
PATENT NO.: 6,066,160  
FILING DATE: November 25, 2002  
TITLE: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN  
MINIMALLY INVASIVE SURGERY AND TO FACILITATE  
STANDARD TISSUE SECURING  
EXAMINER: Woo, J.  
ART UNIT: 3731

Commissioner for Patents

POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST  
(REVOCATION OF PRIOR POWERS)

REVOCATION OF PRIOR POWERS OF ATTORNEY

all powers of attorney previously given are hereby revoked and

NEW POWER OF ATTORNEY

the following attorney(s) and/or agent(s) are hereby appointed to prosecute and  
transact all business in the Patent and Trademark Office connected therewith.

Robert E. Krebs, Registration No. 25,085; David B. Ritchie, Registration No. 31,562; Marc S. Hanish, Registration  
No. 42,626; John P. Schaub, Registration No. 42,125; Adrienne Yeung, Registration No. 44,000; Steven J.  
Robbins, Registration No. 40,299; Thierry K. Lo, Registration No. 49,097; William Samuel Niece, Registration No.  
47,824; J. Davis Gilmer, Registration No. 44,711; William E. Winters, Registration No. 42,232; Masako Ando, (37  
C.F.R. §10.9 (b)); and John Klaas Ulikema, Registration No. 20,282; Becky L. Troutman, Registration No. 38,703;  
Hal J. Bohner, Registration No. 27,856;

56



Quickie, LLC

(type or print identity of assignee of entire interest)

3 New York Plaza  
Attn: Alan Fell  
New York, NY 10004

Address

Recorded in PTO on 11/23/1998  
Reel 9608  
Frame 0640

### ASSIGNEE STATEMENT

The undersigned states that he is authorized to act on behalf of the assignee.

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MAR 11 2003  
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Date 3/4/03

Aubrey C. Galloway  
Signature

Aubrey C. Galloway  
(type or print name of person authorized to sign on behalf of assignee)

Managing Partner  
Title

# **EXHIBIT H**

12-05-03 11:47am From:Thelen, Reid, &amp; Priest LLP

T-100 P.002/002 F-254

Attorney Docket No. 034521-003

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo  
CONTROL NO.: 90/006,460  
PATENT NO.: 6,066,160  
FILING DATE: November 25, 2002  
TITLE: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN  
MINIMALLY INVASIVE SURGERY AND TO FACILITATE  
STANDARD TISSUE SECURING  
EXAMINER: Woo, J.  
ART UNIT: 3731

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## CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted with the United States Patent and Trademark Office to Director for Patents, Fax No. (703) 872-9306 on the date printed below:

Date: 12/5/03

Name:

Arnette Valdivia

COMMISSIONER FOR PATENTS  
WASHINGTON, D.C. 20231

CHANGE OF ATTORNEY DOCKET NUMBER  
AND CHANGE OF ADDRESS NOTICE

Please change the Attorney Docket No. for this patent application to 034521-003.

Please address all further communications regarding this application to:

Robert E. Krebs  
Thelen Reid & Priest LLP  
P.O. Box 640640  
San Jose, CA 95164-0640  
Telephone (408) 292-5800; Facsimile (408) 287-8040

Respectfully submitted,

THELEN REID &amp; PRIEST LLP

Robert E. Krebs

Reg. No. 25,885

Dated:

12/2/03

# **EXHIBIT I**

**Thelen Reid & Priest LLP**  
Attorneys At Law

701 Pennsylvania Avenue, N.W., Suite 800  
Washington, DC 20004-2608

Tel. 202.508.4000

Fax 202.508.4321

www.thelenreid.com

February 28, 2003

VIA FEDERAL EXPRESS

Dr. Stephen Colvin  
NYU Medical Center  
530 First Avenue  
Suite 9V  
New York, NY 10016

Dear Steve:

Enclosed are two copies of the form we need you to execute so we can represent Quickie in the Re-Exam before the U.S. Patent and Trademark Office. Please sign both and return them to me. Thanks.

Cordially yours,



Mark Fox Evens

Enclosure

Error! Unknown document property name.

**PATENT**

**Practitioner's Docket No. 034521-002**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Patent No: 6,066,160**

**Issued: May 23, 2000**

**Title: PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN  
MINIMALLY INVASIVE SURGERY AND TO FACILITATE  
STANDARD TISSUE SECURING**

**Inventors: Stephen Colvin, Eugene Grossi, Allan Katz, Paul Oddo**

**Commissioner of Patents and Trademarks  
Washington, D.C. 20231**

**POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST  
(REVOCATION OF PRIOR POWERS)**

As assignee of record of the entire interest of the above identified patent,

**REVOCATION OF PRIOR POWERS OF ATTORNEY**

all powers of attorney previously given are hereby revoked and

**NEW POWER OF ATTORNEY**

the following attorney(s) and/or agent(s) are hereby appointed to prosecute and  
transact all business in the Patent and Trademark Office connected therewith.

**Robert E. Krebs, Registration No. 25,885; David B. Ritchie, Registration No. 31,562; Marc S.  
Hanish, Registration No. 42,626; John P. Schaub, Registration No. 42,125; Adrienne  
Yeung, Registration No. 44,000; Steven J. Robbins, Registration No. 40,299; Thierry K. Lo,  
Registration No. 49,097; William Samuel Niece, Registration No.: 47,824; J. Davis Gilmer,  
Registration No. 44,711; William E. Winters, Registration No. 42,232, Masako Ando, (37  
C.F.R. §10.9 (b)); and John Klaas Uilkema, Registration No. 20,282; Becky L. Troutman,  
Registration No. 36,703; Hal J. Bohner, Registration No. 27,856;**

**Quickie, LLC**

(type or print identify of assignee of entire interest)

**3 New York Plaza  
Attn: Alan Fell  
New York, NY 10004**

**Address**

Recorded in PTO on 11/23/1998  
Reel 9608  
Frame 0640

### ASSIGNEE STATEMENT

The undersigned states that he is authorized to act on behalf of the assignee.

**Signature**

Date \_\_\_\_\_

Stephen Colvin

(type or print name of person authorized to sign  
on behalf of assignee)

**Title**

# **EXHIBIT J**



DECLARATION AND POWER OF ATTORNEY

We, STEPHEN COLVIN, EUGENE GROSSI, ALLAN KATZ, and PAUL ODDO, hereby declare that we are citizens of the United States of America and residents of New York, New York, New York, New York, Freeport, New York, and Freeport, New York,; and that our Post Office Addresses are 1775 York Avenue, Apt. 32B, New York, New York 10028; 530 East 83rd Street, New York, New York 10028; 700 Miller Avenue, Freeport, New York 11520; and 216 Garfield Street, Freeport, New York, 11520 respectively; that we believe we are the original, first and joint inventors of the subject matter which is claimed and for which a patent is sought on the invention entitled

PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE  
IN MINIMALLY INVASIVE SURGERY AND TO  
FACILITATE STANDARD TISSUE SECURING

the specification of which is attached hereto.

We hereby state that we have reviewed and understand the contents of the above identified specification, including the claims.

We acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, Section 1.56(a).

We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or

JR2729620/11299254.1  
11/13/98-MAZ/11

imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

We hereby appoint Todd S. Sharinn, Registration No. 42,144, whose Post Office Address is Pepe & Hazard LLP, 225 Asylum Street, Hartford, Connecticut 06103, our attorney to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith. Address all correspondence to Todd S. Sharinn at the aforesaid address and direct all telephone calls to him at Area Code 860, Telephone No. 241-2631.

Date

*[Signature]*  
STEPHEN COLVIN  
Residence Address:  
1775 York Avenue, Apt. 32B  
New York, New York 10028

Date

*[Signature]*  
EUGENE GROSSI  
Residence Address:  
530 East 83rd Street  
New York, New York 10028

Date

*[Signature]*  
ALLAN KATZ  
Residence Address:  
700 Miller Avenue  
Freeport, New York 11520

JRF/28620/1799254.1  
11/13/98-MAZ/H1

JOSEPH T. MULLER  
Notary Public, State of New York  
No. 4511713  
Qualified in New York County  
Commission Expires 8/26/99  
*[Signature]*

QLLC 0073316

Date 11/17/99 Paul O'Deo  
PAUL O'DEO  
Residence Address:  
216 Garfield Street  
Freeport, New York 11520

JOSEPH T. MINUTELLO  
Notary Public, State of New York  
No. 48925619  
Qualified in New York County  
Commission Expires 8/20/99.

Joseph T. Minutello

00103087-112300

# **EXHIBIT K**

S P E C I F I C A T I O N

TO ALL WHOM IT MAY CONCERN:

Be it known that We, STEPHEN COLVIN, EUGENE GROSSI, ALLAN KATZ, and PAUL ODDO citizens of the United States of America, and residents of New York, in the County of New York and State of New York; New York, in the County of New York and State of New York; Freeport, in the County of Nassau and State of New York; and Freeport in the County of Nassau and State of New York; respectively, have invented certain new and useful improvements in a

PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE  
IN MINIMALLY INVASIVE SURGERY AND TO  
FACILITATE STANDARD TISSUE SECURING

of which the following is a specification:

**PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN MINIMALLY  
INVASIVE SURGERY AND TO FACILITATE STANDARD TISSUE SECURING**

**FIELD OF THE INVENTION**

The instant invention relates to apparatus and systems for use in securing prosthetics to native tissue or tissue to native tissue in medical procedures. More particularly, this invention relates to apparatus and systems which facilitate securing the ends of standard sutures which can be used to secure tissues to native tissue or prosthetic devices to native tissue without requiring activation of the device.

**BACKGROUND OF THE INVENTION**

Suturing is an integral part of surgery. It is used to hold tissues together or to secure prosthetics (including but not limited to, heart valve prosthetics, annuloplasty rings, vascular grafts, and orthopedic implants) to native tissue. Sutures have conventionally been used to fasten such implants. The suture material is passed through the native tissue and then through part of the prosthetic or adjacent native tissue. The two are then drawn and secured together by tying a knot on the end of the suture.

By way of example, heart valve replacements and prostheses have been used for many years and many improvements in both the functionality and ease of implantation have been made thereon. More precisely, during conventional heart valve replacement surgery, sutures are placed in the native annulus after removal of a damaged native valve. Often small pledgets are threaded on the sutures to buttress their contact with the native tissue. The suture is then inserted through the suture ring of the replacement heart valve. Knots are then tied on the sutures to secure the replacement heart valve to the native heart annulus in its desired position such that there will be no leakage around the replacement heart valve.

When it is recognized that each of the completed knots used to secure the replacement heart valve to the native annulus is actually composed of six or more individual knots, it will be appreciated that this task would take a surgeon a significant amount of time

to secure the replacement heart valve into position. Further, with the increased level of difficulty associated with this process, comes an increase in the likelihood of error by the surgeon. In addition, since the incision must be larger and the procedure requires greater time, the patient is exposed to collateral risk factors (which include, but are not limited to, an increased incidence of infection, hypothermia, and fluid loss).

Traditionally, the conventional prosthetic attachment procedure has required the surgeon to possess great dexterity and to be in close proximity to the knot. Emerging minimally invasive surgical techniques add an extra level of difficulty to this task since the incisions associated with such methods are generally much smaller than in conventional surgery. As a result, surgeons are required to spend more time tying off the sutures, or in some cases are required to stretch the incision in order to complete the task. By requiring the surgeon to make larger incisions to gain access to tie these knots, the advantages commonly associated with these minimally invasive surgical procedures, of quicker healing, less disruption to surrounding tissues, and less likelihood of infection, are jeopardized.

Sensitive to these new demands, methods and apparatus for implanting heart valve replacement apparatus under minimally invasive conditions have been developed. Examples of such replacement apparatus and methods for implanting heart valve replacement apparatus have been disclosed in U.S. Patent Nos. 4,655,773; 4,364,126; 4,204,283; 3,898,999; 3,996,623; 3,859,668; 3,534,411; and 5,776,188. Indeed, apparatus and methods have been disclosed that avoid the use of sutures altogether. For example, U.S. Patent No. 3,143,742 discloses spacing curved pins along the circumference of the apparatus to pierce the tissue of the native annulus of the heart at the desired attachment point. Unfortunately, due to vagaries in the native tissue, good coaptation along a geometrically perfect surface is not always possible.

Novel technologies have been deployed for the purpose of sewing heart valve subcomponents together. U.S. Patent Nos. 5,071,431; 4,863,460; and 4,743,253 each use a ductile or deformable locking ring as a means to bind the various subcomponents of the heart valve device. However, the aforementioned approaches do not avoid the securing of the implant to the native tissue without the use of traditional suturing methods.

Recently, medical instruments have been developed which permit surgeons to manipulate sutures through a small opening. However, these instruments, which provide an extension between the surgeon's hands and the suture, are cumbersome, thus impeding the surgeon's ability to appropriately place the suture knot.

In response to this problem, surgeons have sought alternatives to conventional knot-tying techniques. Various sutures and suture terminating devices have been disclosed. The most frequently disclosed among these alternatives is the use of surgical clips, which are designed to replace suture knots.

Examples of surgical clips to terminate sutures have been disclosed in a number of patents including U.S. Patent Nos. 3,976,079; 5,282,832; 5,078,731; 5,474,572; 5,171,251; and 5,409,499. In general, these devices contain locking mechanisms which require the surgeon to deform the device on the suture's path and entrap the suture material in the clip. The suture is fixed in a single location and thus the necessity of tying a knot on the suture is avoided. These devices are problematic because they require actuation and, more importantly, pinpoint accuracy by the surgeon since they are not adjustable.

Still other configurations of surgical clips are disclosed in U.S. Patent Nos. 5,078,731; 5,474,572; 5,171,251; and 5,409,499. These clips are also actuated by the surgeon's deformation of the device. The locking mechanisms in these devices are incorporated into the device's body. However, lateral access is required in order to actuate these clips. This cumbersome configuration makes them difficult, if not impossible, to incorporate into prosthetics. Further, these clips also lock the suture into a single position once actuated. This abridges the surgeon's ability to further adjust the tension on the suture, thus requiring the surgeon to remove the suture and repeat the process in order to achieve, when necessary, better coaptation of the tissue by the suture.

Still other surgical clips are disclosed in U.S. Patent Nos. 3,976,079 and 5,282,832. Both of these clips incorporate an additional mating component (retaining clip 96 and retainer 120, respectively), which when attached to the clip locks the suture in place. However, the use of small loose parts is highly undesirable since it is easy to drop and lose



such pieces through a minimally invasive incision. Indeed, if this were to occur, for example, inside a patient's heart, the potential for an arterial embolus and patient injury would greatly increase. Again, these clips, like all the aforementioned clips, lock the suture into a single position, which, as discussed above, has many disadvantages.

Additionally, modifications of sutures and surgical ties have been disclosed in U.S. Patent Nos. 5,123,913 and 4,955,913. The methods presented in these patents include the use of a modified suture or surgical tie having serrations or ridges on the suture's or tie's bodice, which when mated with the appropriate closure device, the suture or tie is allowed to be freely advanced towards closure and cannot slide backwards. This allows the surgeon to incrementally increase the tension on the suture or tie without the need to tie a knot. These modified sutures/ties are not suitable for most surgical applications, since they can not be passed through tissue or prosthetics like a standard suture. In addition, neither of these devices afford the surgeon with the opportunity for precise tightening of the suture or tie since the serrations or ridges are incremental. Further, U.S. Patent No. 5,123,913 discloses a modified suture terminating with a loop member which is designed to mate with the serrations along the length of the suture. While this will function as a surgical suture, the loop member increases the length of the device, making it unsuitable for certain surgical applications, such as securing a heart valve inside the heart. Additionally, these inventions are not compatible with standard sutures.

U.S. Patent No. 5,776,188 discloses three pertinent apparatus for securing a suture without a knot to a heart valve sewing ring. In the first apparatus, plugs 192 (as illustrated in Figure 5) have been credited as devices which help secure the suture in place. This is similar to the suture clip methodology which was discussed above. The drawbacks associated with these plugs are that they: (1) do not eliminate the need for a knot to be tied, (2) do not allow the tension to be incrementally adjusted on the suture, (3) have the potential to dislodge causing patient injury, and (4) may be difficult to position in a minimally invasive cardiac procedure.

The second apparatus provided by U.S. Patent No. 5,776,188, incorporates the use of ball 248 and chamfered slot 242. As illustrated in Figure 7, the ball and slot

cooperate to effectuate the securing of sutures to a heart valve sewing ring without the necessity of a knot. While this embodiment may fasten a suture to the valve sewing ring, it is undesirable to surgeons for a number of reasons. First, this embodiment utilizes a free-floating piece (ball 248) which has the potential to dislodge or jam. Consistent with the concerns raised above, relating to U.S. Patent Nos. 3,976,079 and 5,282,832, if the ball were to dislodge from the device, it could harm the patient. Further, although this embodiment may engage the suture, the rounded nature of the ball will minimize the field of contact and the resulting integrity of the grip thereon. This greatly reduces suitability for such a device since most surgical procedures require a strong and permanent grip.

The final apparatus disclosed within U.S. Patent No. 5,776,188 relies on pressure generated by spring 252 to secure the suture. More particularly, spring 252, which is a small separate piece attached to the device, impedes the sutures movement by trapping it. Therefore, the stronger the spring used, the more pressure it applies to the suture and the more reliable its grip will be. However, as the pressure increases, the surgeon's ability to adjust or fine tune the tension applied to the suture is hampered. In addition, the strength of the grip is directly dependent upon the spring's stamina and strength. Further, consistent with the above discussion relating to the previous apparatus, spring 252 is not captured within the body of the device; accordingly, it is capable of breaking free from the device which could cause patient injury.

As will be more fully appreciated below, none of the aforementioned devices offer the ease and versatility for terminating sutures and thus securely locking tissues and/or prosthetics in place, as the instant invention. Indeed, the instant invention provides a means for securing tissues to native tissues and prosthetic implants to native tissue; the benefits of which may be most appreciated in operations where minimally invasive procedures are utilized.

The apparatus and systems disclosed herein obviate the need for manually tying knots, a procedure which typically requires the surgeon to manipulate his hands in tight proximity of the tissue being secured. This invention may be used as a freestanding

device or may be incorporated into prosthetic implants such as heart valves, annuloplasty rings, orthopedic implants or the like, all of which require securing to native tissues.

Moreover, the devices of the instant invention are applicable to all instances of operative procedures where the surgeon needs to secure tissue with a suture, but has limited access for her/his hands to tie a knot. In instances of using sutures to stop bleeding or securing tissues or implants in minimally invasive procedures, the devices of the instant invention will facilitate the procedure by eliminating the time and physical exposure required to manually tie knots to terminate the suture. The present invention's advantages of enhanced tissue securing with minimal surgical exposure, decreased implementation time, and enhanced reliability are accentuated when compared to existing related technology.

#### SUMMARY OF THE INVENTION

The present invention is directed to apparatus and systems for use in securing the ends of sutures. This invention can be used in a freestanding manner to terminate a suture which holds tissue together or it can be incorporated into a prosthetic in order to hold tissue to the prosthetic. The present invention terminates the ends of standard sutures without knots and without the need for manual proximity thus facilitating minimally invasive surgical procedures.

In one embodiment, the instant invention provides a suture securing apparatus comprising: an apparatus body having a upper surface, a lower surface, an outer surface, and at least one aperture, the aperture having a longitudinal axis extending from the upper surface to the lower surface and defining an aperture surface, wherein a first longitudinal direction and a second longitudinal direction thereof each extends along the longitudinal axis in opposite directions, the aperture including an integral locking means for engaging a suture threaded therethrough.

In a preferred embodiment of the instant invention, the locking means of the suturing securing apparatus comprises a least one ridge formed on at least a portion of the aperture surface for engaging the suture threaded therethrough, each ridge so formed as to facilitate the movement of a suture in the first longitudinal direction along the aperture and

oppose the movement of the suture in the second longitudinal direction along the aperture. In another preferred embodiment of the invention, the locking means of the suture securing apparatus comprises a plurality of ridges formed on at least a portion of the aperture surface for engaging the suture threaded therethrough, each ridge so formed as to facilitate the movement of a suture in the first longitudinal direction along the aperture and oppose the movement of the suture in the second longitudinal direction along the aperture. In other preferred embodiments of the invention, each ridge is formed from an elastic material or a rigid material. In yet another preferred embodiment of the invention, a portion of each ridge extending farthest from the aperture surface is rounded. In a preferred embodiment of the invention, each ridge is formed at an angle of greater than about 30° to the longitudinal axis of the aperture and, even more preferably, each ridge is formed at an angle of about 45° to the longitudinal axis of the aperture.

In a preferred embodiment of the instant invention, the apparatus body of the suture securing device comprises a first aperture and a second aperture, wherein each ridge formed on the first aperture surface is so formed as to facilitate the movement of a suture in the first longitudinal direction along the first aperture and oppose the movement of the suture in the second longitudinal direction along the first aperture and wherein each ridge formed on the second aperture surface is so formed as to facilitate the movement of a suture in the first longitudinal direction along the second aperture and oppose the movement of the suture in the second longitudinal direction along the second aperture, wherein the first longitudinal direction along the first aperture and the first longitudinal direction along the second aperture are directed to the upper surface of the apparatus body. In another preferred embodiment of the instant invention, the first and second apertures are mirror images of each other, as defined by a mirror plane equidistant from them.

In a preferred embodiment of the instant invention, the apparatus body comprises a first aperture and a second aperture, wherein each ridge formed on the first aperture surface is so formed as to facilitate the movement of a suture in the first longitudinal direction along the first aperture and oppose the movement of the suture in the second longitudinal direction along the first aperture and wherein each ridge formed on the

second aperture surface is so formed as to facilitate the movement of a suture in the first longitudinal direction along the second aperture and oppose the movement of the suture in the second longitudinal direction along the second aperture, wherein the first longitudinal direction along the first aperture and the second longitudinal direction along the second aperture are directed to the upper surface of the apparatus body. In other preferred embodiments of the instant invention, the suture securing apparatus is made from biocompatible materials or biodegradable materials.

In a second embodiment, the instant invention provides a suture securing apparatus comprising: (a) an apparatus body having a upper surface, a lower surface, an outer surface, and at least one aperture, the aperture having a longitudinal axis extending from the upper surface to the lower surface and defining an aperture surface, wherein a first longitudinal direction and a second longitudinal direction thereof each extends along the longitudinal axis in opposite directions, the aperture consisting of an upper portion, a middle portion, and a lower portion, the upper portion bounded by the upper surface of the apparatus body and the middle portion, the middle portion bounded by the upper portion and the lower portion, and the lower portion bounded by the middle portion and the lower surface of the apparatus body, wherein the middle portion has a first surface and second surface opposing each other and is wider than either of the upper portion and the lower portion and forms a cavity therein; and (b) a movable cam member disposed in the middle portion of the aperture, the cam member having an engagement end and a rotation end, the rotation end being wider than the width of the upper portion of the aperture thereof and the width of the lower portion of the aperture thereof and disposed near the second surface, and the engagement end disposed near the first surface; wherein the cam member moves to an unengaged position to facilitate the movement of a suture threaded through the aperture in the first longitudinal direction along the aperture and moves to an engaged position to engage the suture threaded through the aperture in the second longitudinal direction by compressing the suture between the engagement end of the cam member and the first surface of the middle aperture to oppose the movement of the suture in the second longitudinal direction along the aperture.



In a preferred embodiment of the instant invention, the first surface of the middle aperture comprises at least one ridge, each ridge so formed as to facilitate the movement of a suture in the first longitudinal direction along the aperture and oppose the movement of the suture in the second longitudinal direction along the aperture. In another preferred embodiment of the instant invention, the first surface of the middle aperture comprises a plurality of ridges, each ridge so formed as to facilitate the movement of a suture in the first longitudinal direction along the aperture and oppose the movement of the suture in the second longitudinal direction along the aperture. In yet other preferred embodiments of the instant invention, each ridge is formed from an elastic material or a rigid material.

In yet another preferred embodiment of the instant invention, the engagement end of the cam member comprises serrations to grip the suture when engaged. In another preferred embodiment of the instant invention, the apparatus body includes a first aperture with a first movable cam member therein and a second aperture with a second movable cam member therein, wherein the first movable cam member moves to an unengaged position to facilitate the movement of a suture threaded through the first aperture in the first longitudinal direction along the aperture and moves to an engaged position to engage the suture threaded through the first aperture in the second longitudinal direction by compressing the suture between the engagement end of the first movable cam member and the first surface of the middle aperture thereof to oppose the movement of the suture in a second longitudinal direction along the first aperture; wherein the second movable cam member moves to an unengaged position to facilitate the movement of a suture threaded through the second aperture in the first longitudinal direction along the second aperture and moves to an engaged position to engage the suture threaded through the second aperture in the second longitudinal direction by compressing the suture between the engagement end of the first movable cam member and the first surface of the middle aperture thereof to oppose the movement of the suture in a second longitudinal direction along the second aperture; and wherein the first longitudinal direction along the first aperture and the first longitudinal direction along the second aperture are both directed to the upper surface of the apparatus

body. In yet another preferred embodiment of the instant invention, the first and second apertures and first and second cam members are mirror images of each other, as defined by a mirror plane equidistant from them.

In still another preferred embodiment of the instant invention, the apparatus body includes a first aperture with a first movable cam member therein and a second aperture with a second movable cam member therein, wherein the first movable cam member moves to an unengaged position to facilitate the movement of a suture threaded through the first aperture in the first longitudinal direction along the aperture and moves to an engaged position to engage the suture threaded through the first aperture in the second longitudinal direction by compressing the suture between the engagement end of the first movable cam member and the first surface of the middle aperture thereof to oppose the movement of the suture in a second longitudinal direction along the first aperture; wherein the second movable cam member moves to an unengaged position to facilitate the movement of a suture threaded through the second aperture in the first longitudinal direction along the second aperture and moves to an engaged position to engage the suture threaded through the second aperture in the second longitudinal direction by compressing the suture between the engagement end of the first movable cam member and the first surface of the middle aperture thereof to oppose the movement of the suture in a second longitudinal direction along the second aperture; and wherein the first longitudinal direction along the first aperture and the second longitudinal direction along the second aperture are both directed to the upper surface of the apparatus body. In other preferred embodiments of the instant invention, the suture securing apparatus is made from biocompatible materials or biodegradable materials.

The instant invention also contemplates securable medical prosthesis device comprising a medical prosthesis device in physical contact, physical engagement, or integrally formed with at least one suture securing apparatus according to the instant invention. Such medical prosthesis devices include a sewing ring implant shaped and sized for attachment to the inner surface of a native annulus, the sewing ring implant having a

plurality of suture securing apparatuses distributed around the circumference of the sewing ring implant.

### BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a top perspective view of a freestanding suture terminating device showing a technique for terminating a suture in accordance with one embodiment of the present embodiment.

FIG. 2 is a top plan view of the suture terminating device of FIG. 1.

FIG. 3 is a cross-sectional view of a suture terminating device taken along line 2-2 of FIG. 2 showing a technique for terminating a suture in accordance with one embodiment of the present embodiment.

FIG. 4 is a top perspective partially exploded view of an artificial arterial valve attached to the native tissue of the aorta in accordance with the present invention cut-away to reveal a suture terminating device, in accordance with the present invention, incorporated therein.

FIG. 5 is a top perspective view of a freestanding suture terminating device showing a technique for terminating a suture in accordance with another embodiment of the present embodiment.

FIG. 6 is a bottom plan view of the suture terminating device of FIG. 5.

FIG. 7 is a cross-sectional view of a suture terminating device taken along line 7-7 of FIG. 6 showing a technique for terminating a suture in accordance with another embodiment of the present embodiment.

FIG. 8 is a cross-sectional view of a suture terminating device also taken along line 7-7 of FIG. 6 showing a technique for terminating a suture in accordance with still another embodiment of the present embodiment.

### DESCRIPTION OF THE PREFERRED EMBODIMENTS

FIGS. 1-3 illustrate a freestanding version of the instant suture terminating device 10 in accordance with one embodiment of the present invention. As depicted, the



present suture terminating device consists of a main member 12 having apertures 14(a) and 14(b) positioned therein to facilitate the threading of standard suture 16 therethrough. As the surgeon draws suture 16 through aperture 14, suture 16 is secured in place by the locking mechanism 18 which is housed within that same aperture 14.

Main member 12, which may (as illustrated in FIG. 1) exist as a freestanding device or (as illustrated in FIG. 4) be incorporated into a prosthetic device, may be constructed in a variety of manners including the milling or molding of biocompatible plastics and metals, or biodegradable materials. Depending upon the device's actual application, the size of the suture, and the material used, main member 12 should be large enough to both contain and support the sutures drawn therethrough without disruption or distortion to the local native tissue and/or the prosthetic device attached thereto or thereby. For example, if main member 12 is constructed of stainless steel and is intended to be used with 2-0 braided synthetic suture material for securing a heart valve sewing ring, then the main member 12 should be 0.1" (width) by 0.15" (length) by 0.1" (thickness). The width of main member 12 must naturally be greater than the diameter of the suture 16 which it is intended to contain and terminate.

An additional benefit of the present embodiment is that, under certain circumstances, main member 12 also functions as a pledget (i.e., dispersing the pressure of the suture over a surface area greater than that of the suture alone, thus bolstering the suture's coupling of the desired members (i.e., tissue to native tissue and/or prosthetic to native tissue) while reducing the likelihood of damage to the prosthetic device or the surrounding tissue.

The present suture terminating device will preferably incorporate two apertures within the main member 12 of the device. Apertures 14(a) and 14(b) are generally housed in the midline of main member 12. Although the apertures' alignment may vary under certain circumstances, they will generally have, as illustrated in FIG. 2, a mirror image orientation to one another. When arranged in this configuration, the apertures cooperate as pairs, each member receiving one of the two ends of the suture being secured. Each aperture, whether functioning independently or as a member of a cooperating pair,

comprises a first opening 22 in the bottom portion 24 of main member 12, a locking mechanism 18, and a second opening 26 in the top portion 28 of main member 12.

First opening 22 is round in nature and of adequate size to accommodate the berth of suture 16. Further, as illustrated in FIG. 3, first opening 22 may be accentuated in a conical fashion in order to facilitate the surgeon's threading of suture 16 therethrough. Second opening 26 is eccentric and bi-polar. Returning to FIG. 2, first pole 42 is generally round with sufficient diameter to accommodate the berth of suture 16. Second pole 44 is formed by an acute angular narrowing orientated towards the axis of second opening 26. The rounded portions 46 and 48 of the first and second openings 22 and 26 respectively, are preferably offset from each other.

FIG. 3 depicts an alternate rendition of the present embodiment in which the inner surface 50 of the angulated portion 52 of aperture 14 may be lined with ridges 20, although under certain circumstances a single ridge may suffice. Ridges 20 are preferably shaped, and oriented so as to facilitate the passage of the suture in one direction and to oppose any movement in the other. The number, density, and amplitude of the ridges should be increased as the overall dimensions of the device and suture material used increases. The apex of the ridges are preferably rounded; this facilitates the entry of the suture material into the locking mechanism, while avoiding the use of a sharp edge which could potentially abrade, damage, or weaken the suture. Although it is generally preferable for the ridges to be constructed in an unyielding or rigid form, it may be desirable in certain circumstances to construct the ridges such that they possess elastic qualities in order to further enhance their gripping action. The longitudinal axis of ridges 20 generally extend out from the inner surface 50 of the angulated portion 52 at a 45° angle. The total taper (from bottom to top) between the opposing segments of aperture 14 which form the angulated portion 52 is, in the present version of this embodiment, 4°.

The apertures' orientation insures that when upward tension is placed on the suture, the suture is coerced, as illustrated in FIGS. 1-3, from position A in the rounded portion of 54 into angulated portion 52 of aperture 14, where the locking mechanism engages the suture, thus locking it in place. In other words, once the surgeon has positioned

the tissue or prosthetic device, the suture terminating device need only be held in place while tension is applied simultaneously to both ends of the suture. This transverses and engages the locking mechanism within the aperture. As tension is placed on the suture and it is drawn through the aperture, the ridges lining the aperture engage the suture in a manner ensuring that the suture may advance, but not regress through the aperture. Multiple points of contact are made between the ridges lining the aperture and the suture material, thus providing for a secured union. Back pressure on the suture from the native tissue maintains its fixation within the suture terminating device's locking mechanism.

Generally, the suture is drawn through the device by the surgeon into its final position, thus providing the desired tension and coaptation of tissue by the suture. However, should the surgeon need to loosen the suture (in order to reposition it for example), the free ends of the suture could be pulled away from the narrowed angulated portion of the apertures. This maneuver would disengage the locking mechanism. Once disengaged, the suture is free to move in rounded portion 54 of aperture 14. In order to resecure the suture, the surgeon would again place tension on the suture to engage it in the locking mechanism and advance the suture until the desired tension was achieved.

FIG. 4 displays still another embodiment of the present invention. More particularly, as the cutaway view of FIG. 4 depicts, suture terminating device 10 is positioned inside valve 30 in this embodiment. Consistent with standard suturing techniques, suture 16 enters valve 30 from its bottom, is threaded through the suture terminating device positioned therein, and exits from the valve's top.

Under certain circumstances, it may be desirable for the surgeon to use a pledget when securing a suture with the suture terminating device of the present invention. For instance, when the portion of the suture terminating device contacting the tissue and/or the prosthetic is too small to effectively disperse the pressure placed upon that same tissue and/or prosthetic secured by the suture or suture terminating device, then the use of a pledget is desirable.

As discussed above, the use of a pledget may also be desirable when used in conjunction with the securing of a prosthetic to native tissue. For example, if suture

terminating device 10 were incorporated in artificial arterial valve 30, as illustrated in Figure 4, were constructed of stainless steel and were intended to be used with 2-0 braided synthetic suture material for securing the sewing ring of an artificial arterial valve, then it might be desirable for the surgeon to use pledgets 40 in order to reduce the risk of damage to the valve 30 or the surrounding tissue (aorta wall 36 in this case). Although pledgets may take many forms, they are generally manufactured from TEFLON® or DACRON®. They function by increasing the surface area over which the suture's tension is distributed.

Although placement of the pledget may vary from procedure-to-procedure, generally the surgeon, as illustrated in FIG. 4, will thread suture 16 first through pledget 40, then through the native tissue (aorta wall 36 in this case), and ultimately through the prosthetic and the suture terminating device 10 implanted therein. As depicted in the present illustration, the suture 16 transverses through valve 30 thus securing artificial arterial valve 30 to aorta 35. Once in place, the surgeon engages the locking mechanism as discussed above, and if satisfied with the coaptation, cuts off and removes the excess suture material.

A second preferred embodiment of the present invention is depicted in FIGS. 5-8. In this embodiment, suture terminating device 70 consists of a main member 72 having apertures 74(a) and 74(b) positioned therein to facilitate the threading of standard sutures 76 therethrough. As the surgeon draws the suture 76 through aperture 74, the suture is secured in place by locking mechanism 78 which is housed within the aperture.

Suture terminating device 70 may be constructed in a variety of manners including the milling or molding of biocompatible plastics and metals, or biodegradable materials. Depending upon the actual application, the size of the suture, and the material used, main member 72 should be large enough to both contain and support the sutures drawn therethrough without disruption or distortion to the local native tissue and/or the prosthetic device attached thereto or thereby.

As depicted by FIG. 5, apertures 74(a) and 74(b) which are housed within main member 72 comprise a first opening 80 in the bottom portion 82 of main member 72, a locking mechanism 78, and a second opening 84 on the top portion 86 of the main

member. The first opening 80 is somewhat conical in nature, to facilitate the surgeon's introduction of the suture into the aperture. The second opening 84 is preferably round in nature and adequately sized to accommodate the berth of suture 76. Preferably, first and second openings 80 and 84 are aligned on top of each other. The orientation of aperture 74, is normal to that of main member 72.

The version of the present embodiment of the suture terminating device illustrated in FIGS. 5-8 incorporates two apertures within the main member 72 of the device. Apertures 74(a) and 74(b) are generally housed in the midline of main member 72. Although the placement of the apertures within suture terminating device 70 may vary under certain circumstances, they will generally have, as illustrated in FIG. 6, a mirror image orientation to one another. When arranged in this configuration, the apertures cooperate as pairs, each member receiving one of the two ends of the suture being secured. Each aperture, whether functioning independently or as a member of a cooperating pair, comprises, as discussed above and as illustrated by FIG. 7, a first opening 80 in the bottom portion 82 of main member 72, a locking mechanism 78, and a second opening 84 in the top portion 86 of main member 72.

As depicted in FIG. 7, medial aspect 104 of aperture 74 is flat, and is preferably lined with ridges or serrations 88 which are generally perpendicular to the aperture's orientation. Although, as depicted within FIG. 8, the ridges or serrations 88 may be absent in certain applications. Extending from aperture 74 and vertically aligned with directly medial aspect 104 within main member 72 is cavity 90, which has a rounded portion 98 preferably formed at the point furthest from the medial aspect of aperture 74.

Housed within cavity 90 is cam member 92. The thickness of cam member 92 would typically be uniform. It is preferably narrower than the diameter of aperture 74 and cavity 90. Cam member 92 is eccentric, having a swollen rounded portion 94 at the first end 106, and a protuberance 96 extending out from second end 108.

The rounded portion 94 of cam member 92 cooperates with the rounded portion 98 of cavity 90. To ensure that cam member 92 is permitted to move radially in a north/south orientation within cavity 90.



Cam member 92 is captured within cavity 90, since the largest dimension of the cam member is larger than either end opening of the aperture. This capturing prevents cam member 92 from breaking free from suture terminating device 70 and causing injury to the patient. Further, the spatial relationship between cam member 92 and cavity 90 minimizes any potential for mechanical failure associated with terminating device 70.

The second end 108 of cam member 92 protrudes into the center lumen of aperture 74. Preferably, there are ridges 110 on the surface of the second end of cam member 92. These ridges are, most preferably, orientated to cooperate with the ridges 88 on medial aspect 100 of aperture 74.

Cam member 92 and its mating receptacle in the wall of the aperture 74 are eccentric such that when cam member 92 is rotated in an upward direction, the eccentric edge of cam member 92 moves away from center lumen of the aperture rotating into the receptacle. When cam member 92 is rotated downwards, the cam member edge is brought further put into the lumen of the aperture and into incrementally increasing contact with the ridges lining the flat surface of the aperture apposition against the far wall of aperture 74. Engagement of locking mechanism 78 is accomplished when suture 76 is trapped between ridges 88 which medial aspect 100 of aperture 74 and ridges 110 which, as discussed above, line second end 78 of cam member 92. More precisely, as suture 76 is advanced through aperture 74, cam member 92 rotates, as illustrated by the arrows in FIG. 7 away from the medial aspect of aperture 74. Once the surgeon has applied her final tension to suture 76, back pressure from the native tissue causes suture 76 to slightly withdraw from aperture 74. As suture 76 withdraw, ridges 110 on cam 92 frictionally engages suture 76. This, in turn, causes cam 92 to rotate radially with suture 76. The asymmetric shape of cam member 92 ensures that, as cam member 92 rotates, ridges 110 cooperate with ridges 88 on the medial aspect of aperture 74, thus trapping the suture therein. Over rotation, which would undermine the integrity of locking mechanism 78, is prevented by retaining wall 112 of cavity 90.

If the surgeon needs to readjust the suture, placing tension on the suture end it will pull it upwards and disengage the second member from its trapped position against

the aperture wall. Once repositioned, tension is reapplied, the second member re-engaged, and the suture locked into place.

#### EXAMPLE 1:

By way of example, this invention may be incorporated, as provided above, into heart valve prosthetics. By incorporating the present invention into the sewing ring of a heart valve or heart annuloplasty ring or device, the surgeon would merely have to feed the sutures into appropriately located apertures. The prosthesis would be positioned, and the sutures locked into place without the need for the proximity of manual knot tying.

Typically the surgeon would place double ended sutures through the native annular tissue in a concentric fashion around the valve annulus. Each paired suture end would then be threaded through the appropriately paired knotless suture device. These devices will be incorporated into the perimeter of prosthetic valve sewing ring at appropriate distances depending upon the application. The valve is then advanced from outside the patient's body into the heart. The surgeon then removes all slack from the suture the valve would then be placed in its desired position. Once engaged, the back pressure of the native tissue ensures that the suture remains locked within the suture terminating device. Depending upon the type of suture used (and the elasticity associated with the same), contraction of the suture may also compliment the engagement of the locking mechanism.

After verification of proper tension and valve position, the suture ends are cut off. This is particularly advantageous for use with minimally invasive techniques since, as discussed above, these apparatus and systems obviate the need for tying knots.

#### EXAMPLE 2:

The present invention will also be useful for thorascopic thoracic surgery. It is necessary to place sutures to stop bleeding during thoracic surgery. This invention would allow standard suture technique to be use through thorascopic ports, without forcing proximity to the site of the suture in order to terminate the suture ends. In this application, the body of the device (with two apertures) could either be used alone to terminate a suture

or the device could be utilized with a pledget. In this fashion, once a standard suture is placed into the bleeding tissue, tension is placed on the tissue to compress and stop the bleeding. Normally the surgeon would then tie a knot to terminate the suture with the proper tension. Instead, using the suture securing device of the instant invention, the present suture termination is advanced along the suture until it encounters the tissue to be ligated. Tension is applied to the sutures. Once the desired tension on the ligated tissue is achieved, the suture terminating device is engaged, and the excess suture is trimmed.

If the tissue compression is required to be distributed over a greater surface area than that provided by the bottom of the body of the current invention or of a pledget, then the present suture terminating device should be incorporated into a fabric cuff which will enlarge the contact area.

#### EXAMPLE 3:

Likewise, the suture securing device of the instant invention can be used in orthopedic surgery to terminate sutures which are placed arthroscopically, where access for manual knot tying is limited. In this application, sutures are placed in standard fashion to repair torn ligaments. The knotless suture device of the instant invention would be threaded over the suture ends and advanced to the site of the repair. After the final appropriate tension had been applied to the suture material, the locking mechanism is engaged. Subsequently, the suture ends are cut off.

For the reasons discussed throughout, this application is highly desirable since it would avoid the necessity of manual proximity to tie a knot. Additionally, the embodiments of this invention can be incorporated into orthopedic implants to enhance and facilitate their fixation to native tissue.

As is known in the art, all exposed parts of the invention should generally be made of biocompatible materials, either synthetic or natural, from which surgical implants are typically made, for example, polymers, plastics, biological tissue, metals and alloys, and combinations thereof. In addition, embodiments of this invention can be constructed of biodegradable materials.



As noted above, the Figures and Examples provided are intended to further describe the aspects of the present invention. Thus, the Figures and Examples are illustrative only and are not to be construed as limiting the scope of that which is regarded as the invention. Furthermore, while only two embodiments of the invention has been presented in detail in this disclosure, it will be apparent to those of skill in the art that many modifications, adaptations, and changes may be made thereto without departing from the spirit and scope of the invention. In short, the scope of the present invention is only to be limited by the following claims and the equivalents thereto.

**WHAT IS CLAIMED IS:**

1. A suture securing apparatus comprising:  
an apparatus body having an upper surface, a lower surface, an outer surface, and at least one aperture,  
the aperture having a longitudinal axis extending from the upper surface to the lower surface and defining an aperture surface, wherein a first longitudinal direction and a second longitudinal direction thereof each extends along the longitudinal axis in opposite directions, the aperture including an integral locking means for engaging a suture threaded therethrough. R
2. The suture securing apparatus according to claim 1, wherein the locking means comprises a least one ridge formed on at least a portion of the aperture surface for engaging the suture threaded therethrough, each ridge so formed as to facilitate the movement of a suture in the first longitudinal direction along the aperture and oppose the movement of the suture in the second longitudinal direction along the aperture. R
3. The suture securing apparatus according to claim 2, wherein the locking means comprises a plurality of ridges formed on at least a portion of the aperture surface for engaging the suture threaded therethrough, each ridge so formed as to facilitate the movement of a suture in the first longitudinal direction along the aperture and oppose the movement of the suture in the second longitudinal direction along the aperture. R
4. The suture securing apparatus according to claim 2, wherein each ridge is formed from an elastic material. R
5. The suture securing apparatus according to claim 2, wherein each ridge is formed from a rigid material. R

6. The suture securing apparatus according to claim 2, wherein the portion of each ridge extending farthest from the aperture surface is rounded.

7. The suture securing apparatus according to claim 2, wherein each ridge is formed at an angle of greater than about 30° to the longitudinal axis of the aperture.

8. The suture securing apparatus according to claim 7, wherein each ridge is formed at an angle of about 45° to the longitudinal axis of the aperture.

9. The suture securing apparatus according to claim 2, the apparatus body comprising a first aperture and a second aperture, wherein each ridge formed on the first aperture surface is so formed as to facilitate the movement of a suture in the first longitudinal direction along the first aperture and oppose the movement of the suture in the second longitudinal direction along the first aperture and wherein each ridge formed on the second aperture surface is so formed as to facilitate the movement of a suture in the first longitudinal direction along the second aperture and oppose the movement of the suture in the second longitudinal direction along the second aperture, wherein the first longitudinal direction along the first aperture and the first longitudinal direction along the second aperture are directed to the upper surface of the apparatus body.

10. The suture securing apparatus according to claim 9, wherein the first and second apertures are mirror images of each other, as defined by a mirror plane equidistant from them.

11. The suture securing apparatus according to claim 2, the apparatus body comprising a first aperture and a second aperture, wherein each ridge formed on the first aperture surface is so formed as to facilitate the movement of a suture in the first longitudinal direction along the first aperture and oppose the movement of the suture in the second longitudinal direction along the first aperture and wherein each ridge formed on the second aperture surface is so formed as to facilitate the movement of a suture in the first longitudinal direction along the second aperture and oppose the movement of the suture in the second longitudinal direction along the second aperture, wherein

the first longitudinal direction along the first aperture and the second longitudinal direction along the second aperture are directed to the upper surface of the apparatus body.

12. The suture securing apparatus according to claim 2, wherein the suture securing apparatus is made from biocompatible materials.

13. The suture securing apparatus according to claim 2, wherein the suture securing apparatus is made from biodegradable materials.

14. A suture securing apparatus comprising:

(a) an apparatus body having a upper surface, a lower surface, an outer surface, and at least one aperture, the aperture having a longitudinal axis extending from the upper surface to the lower surface and defining an aperture surface, wherein a first longitudinal direction and a second longitudinal direction thereof each extends along the longitudinal axis in opposite directions,

the aperture consisting of an upper portion, a middle portion, and a lower portion, the upper portion bounded by the upper surface of the apparatus body and the middle portion, the middle portion bounded by the upper portion and the lower portion, and the lower portion bounded by the middle portion and the lower surface of the apparatus body, wherein the middle portion has a first surface and second surface opposing each other and is wider than either of the upper portion and the lower portion and forms a cavity therein; and

(b) a movable cam member disposed in the middle portion of the aperture, the cam member having an engagement end and a rotation end, the rotation end being wider than the width of the upper portion of the aperture thereof and the width of the lower portion of the aperture thereof and disposed near the second surface, and the engagement end disposed near the first surface;

wherein the cam member moves to an unengaged position to facilitate the movement of a suture threaded through the aperture in the first longitudinal direction along the aperture and moves to an engaged position to engage the suture threaded through the aperture in

the second longitudinal direction by compressing the suture between the engagement end of the cam member and the first surface of the middle aperture to oppose the movement of the suture in the second longitudinal direction along the aperture.

15. The suture securing apparatus according to claim 14, wherein the first surface of the middle aperture comprises at least one ridge, each ridge so formed as to facilitate the movement of a suture in the first longitudinal direction along the aperture and oppose the movement of the suture in the second longitudinal direction along the aperture.

16. The suture securing apparatus according to claim 14, wherein the first surface of the middle aperture comprises a plurality of ridges, each ridge so formed as to facilitate the movement of a suture in the first longitudinal direction along the aperture and oppose the movement of the suture in the second longitudinal direction along the aperture.

17. The suture securing apparatus according to claim 14, wherein each ridge is formed from an elastic material.

18. The suture securing apparatus according to claim 14, wherein each ridge is formed from a rigid material.

19. The suture securing apparatus according to claim 14, wherein the engagement end of the cam member comprises serrations to grip the suture when engaged.

20. The suture securing apparatus according to claim 14, the apparatus body including a first aperture with a first movable cam member therein and a second aperture with a second movable cam member therein,

wherein the first movable cam member moves to an unengaged position to facilitate the movement of a suture threaded through the first aperture in the first longitudinal direction along the aperture and moves to an engaged position to engage the suture threaded through the

first aperture in the second longitudinal direction by compressing the suture between the engagement end of the first movable cam member and the first surface of the middle aperture thereof to oppose the movement of the suture in a second longitudinal direction along the first aperture;

wherein the second movable cam member moves to an unengaged position to facilitate the movement of a suture threaded through the second aperture in the first longitudinal direction along the second aperture and moves to an engaged position to engage the suture threaded through the second aperture in the second longitudinal direction by compressing the suture between the engagement end of the first movable cam member and the first surface of the middle aperture thereof to oppose the movement of the suture in a second longitudinal direction along the second aperture; and

wherein the first longitudinal direction along the first aperture and the first longitudinal direction along the second aperture are both directed to the upper surface of the apparatus body.

21. The suture securing apparatus according to claim 20, wherein the first and second apertures and first and second cam members are mirror images of each other, as defined by a mirror plane equidistant from them.

22. The suture securing apparatus according to claim 14, the apparatus body including a first aperture with a first movable cam member therein and a second aperture with a second movable cam member therein,

wherein the first movable cam member moves to an unengaged position to facilitate the movement of a suture threaded through the first aperture in the first longitudinal direction along the aperture and moves to an engaged position to engage the suture threaded through the first aperture in the second longitudinal direction by compressing the suture between the engagement end of the first movable cam member and the first surface of the middle aperture thereof to oppose the movement of the suture in a second longitudinal direction along the first aperture;

wherein the second movable cam member moves to an unengaged position to facilitate the movement of a suture threaded through the second aperture in the first longitudinal direction along the second aperture and moves to an engaged position to engage the suture threaded through the second aperture in the second longitudinal direction by compressing the suture between the engagement end of the first movable cam member and the first surface of the middle aperture thereof to oppose the movement of the suture in a second longitudinal direction along the second aperture; and

wherein the first longitudinal direction along the first aperture and the second longitudinal direction along the second aperture are both directed to the upper surface of the apparatus body.

23. The suture securing apparatus according to claim 14, wherein the suture securing apparatus is made from biocompatible materials.
24. The suture securing apparatus according to claim 14, wherein the suture securing apparatus is made from biodegradable materials.
25. A securable medical prosthesis device comprising a medical prosthesis device in physical contact with at least one suture securing apparatus according to claim 2.
26. A securable medical prosthesis device comprising a medical prosthesis device in physical engagement with at least one suture securing apparatus according to claim 2.
27. A securable medical prosthesis device comprising a medical prosthesis device integrally formed with at least one suture securing apparatus according to claim 2.
28. The securable medical device according to claim 24, wherein the medical prosthesis device is a sewing ring implant shaped and sized for attachment to the inner surface of a native annulus,



the sewing ring implant having a plurality of suture securing apparatuses distributed around the circumference of the sewing ring implant.

29. A securable medical prosthesis device comprising a medical prosthesis device in physical contact with at least one suture securing apparatus according to claim 14.

30. A securable medical prosthesis device comprising a medical prosthesis device in physical engagement with at least one suture securing apparatus according to claim 14.

31. A securable medical prosthesis device comprising a medical prosthesis device integrally formed with at least one suture securing apparatus according to claim 14.

32. A securable medical device according to claim 30, wherein the medical prosthesis device is a sewing ring implant shaped and sized for attachment to the inner surface of a native annulus, the sewing ring implant having a plurality of suture securing apparatuses distributed around the circumference of the sewing ring implant.

33. A suture securing apparatus comprising:

an apparatus body having a upper surface, a lower surface, an outer surface, a first aperture, and a second aperture, the first longitudinal direction of each aperture each being directed to the upper surface of the apparatus body,

wherein each ridge formed on the first aperture surface and second aperture surface is so formed as to facilitate the movement of a suture in the first longitudinal direction and oppose the movement of the suture in the second longitudinal direction, each ridge is formed at an angle of about 45° to the longitudinal axis of the respective aperture, and the portion of each ridge extending farthest from the aperture surface is rounded, and

wherein the first and second apertures are mirror images of each other, as defined by a mirror plane equidistant from them.



34. A suture securing apparatus comprising:

an apparatus body having an upper surface, a lower surface, an outer surface, and the apparatus body including a first aperture with a first movable cam member therein and a second aperture with a second movable cam member therein, the first longitudinal direction of each aperture each being directed to the upper surface of the apparatus body,

wherein the first movable cam member and second movable cam member each moves to an unengaged position to facilitate the movement of a suture threaded through the respective aperture in the first longitudinal direction along the aperture and moves to an engaged position to engage the suture threaded through the respective aperture in the second longitudinal direction by compressing the suture between the engagement end of the respective movable cam member and the first surface of the middle aperture thereof to oppose the movement of the suture in a second longitudinal direction along the respective aperture; and

wherein the first and second apertures and first and second cam members are mirror images of each other, as defined by a mirror plane equidistant from them.

### ABSTRACT OF THE INVENTION

A suture securing apparatus comprising an apparatus body having a upper surface, a lower surface, an outer surface, and at least one aperture, the aperture having a longitudinal axis extending from the upper surface to the lower surface and defining an aperture surface, wherein a first longitudinal direction and a second longitudinal direction thereof each extends along the longitudinal axis in opposite directions, the aperture including an integral locking means for engaging a suture threaded therethrough.

DECLARATION AND POWER OF ATTORNEY

We, STEPHEN COLVIN, EUGENE GROSSI, ALLAN KATZ, and PAUL ODDO, hereby declare that we are citizens of the United States of America and residents of New York, New York, New York, New York, Freeport, New York, and Freeport, New York,; and that our Post Office Addresses are 1775 York Avenue, Apt. 32B, New York, New York 10028; 530 East 83rd Street, New York, New York 10028; 700 Miller Avenue, Freeport, New York 11520; and 216 Garfield Street, Freeport, New York, 11520 respectively; that we believe we are the original, first and joint inventors of the subject matter which is claimed and for which a patent is sought on the invention entitled

1 PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE  
IN MINIMALLY INVASIVE SURGERY AND TO  
FACILITATE STANDARD TISSUE SECURING

the specification of which is attached hereto.

We hereby state that we have reviewed and understand the contents of the above identified specification, including the claims.

We acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, Section 1.56(a).

We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or

TRN296201/299254.1  
11/13/98-MAZALI

RS000168

imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

We hereby appoint Todd S. Sharinn, Registration No. 42,144, whose Post Office Address is Pepe & Hazard LLP, 225 Asylum Street, Hartford, Connecticut 06103, our attorney to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith. Address all correspondence to Todd S. Sharinn at the aforesaid address and direct all telephone calls to him at Area Code 860 Telephone No. 241-2631.

Date

11/17/98

STEPHEN COLVIN

Residence Address:  
1775 York Avenue, Apt. 32B  
New York, New York 10028

Date

11/17/98

EUGENE GROSSI

Residence Address:  
530 East 83rd Street  
New York, New York 10028

Date

11/17/98

ALLAN KATZ

Residence Address:  
700 Miller Avenue  
Freeport, New York 11520

JR9/28620/1/299254.1  
11/15/98-MAZ/H

JOSEPH T. MINUTELLO  
Notary Public, State of New York  
No. 4099560  
Qualified in New York County  
Commission Expires 8/20/99

Joseph T. Minutello

RS000169

Date

11/17/99

PAUL ODINO

Residence Address:

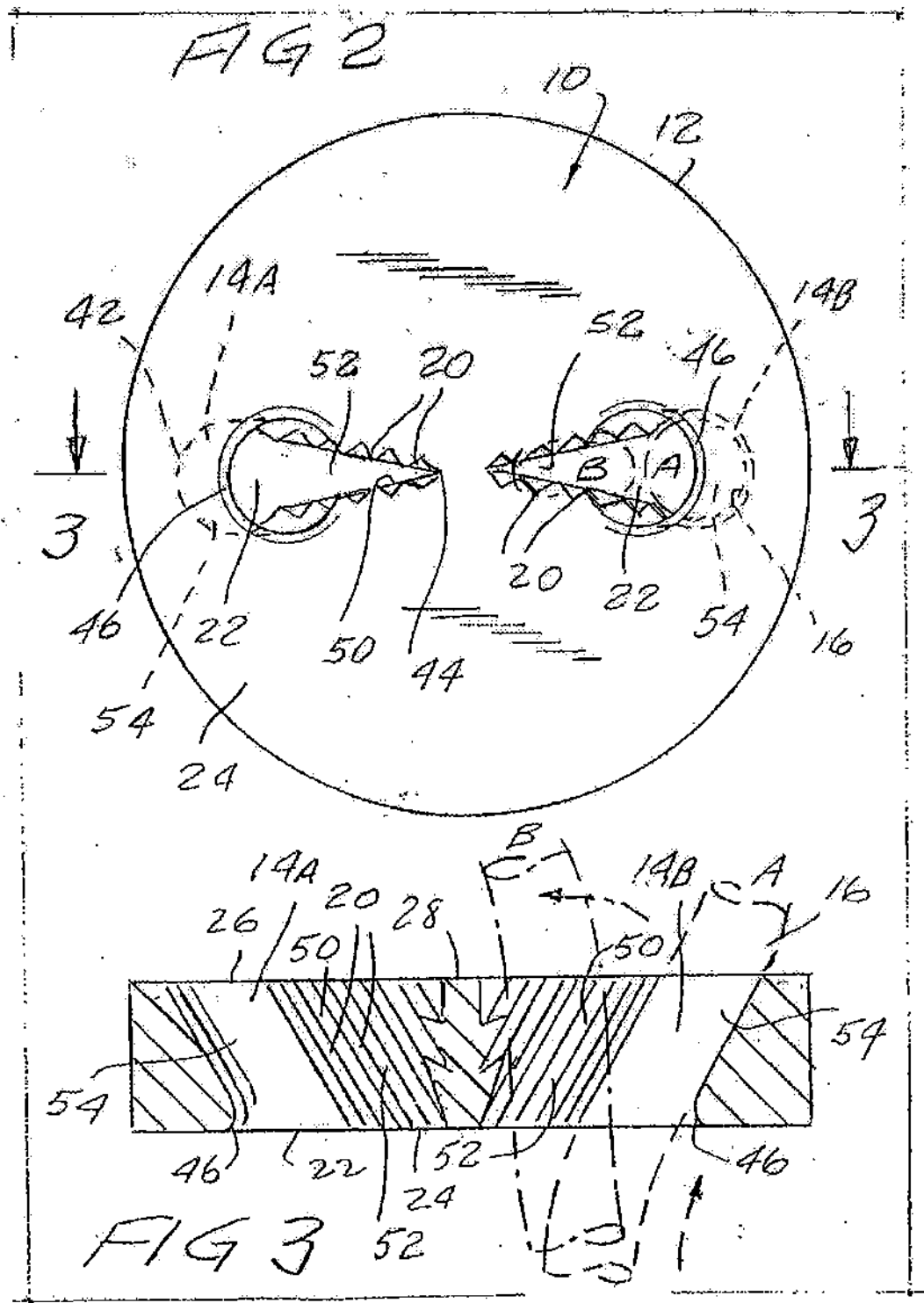
216 Garfield Street

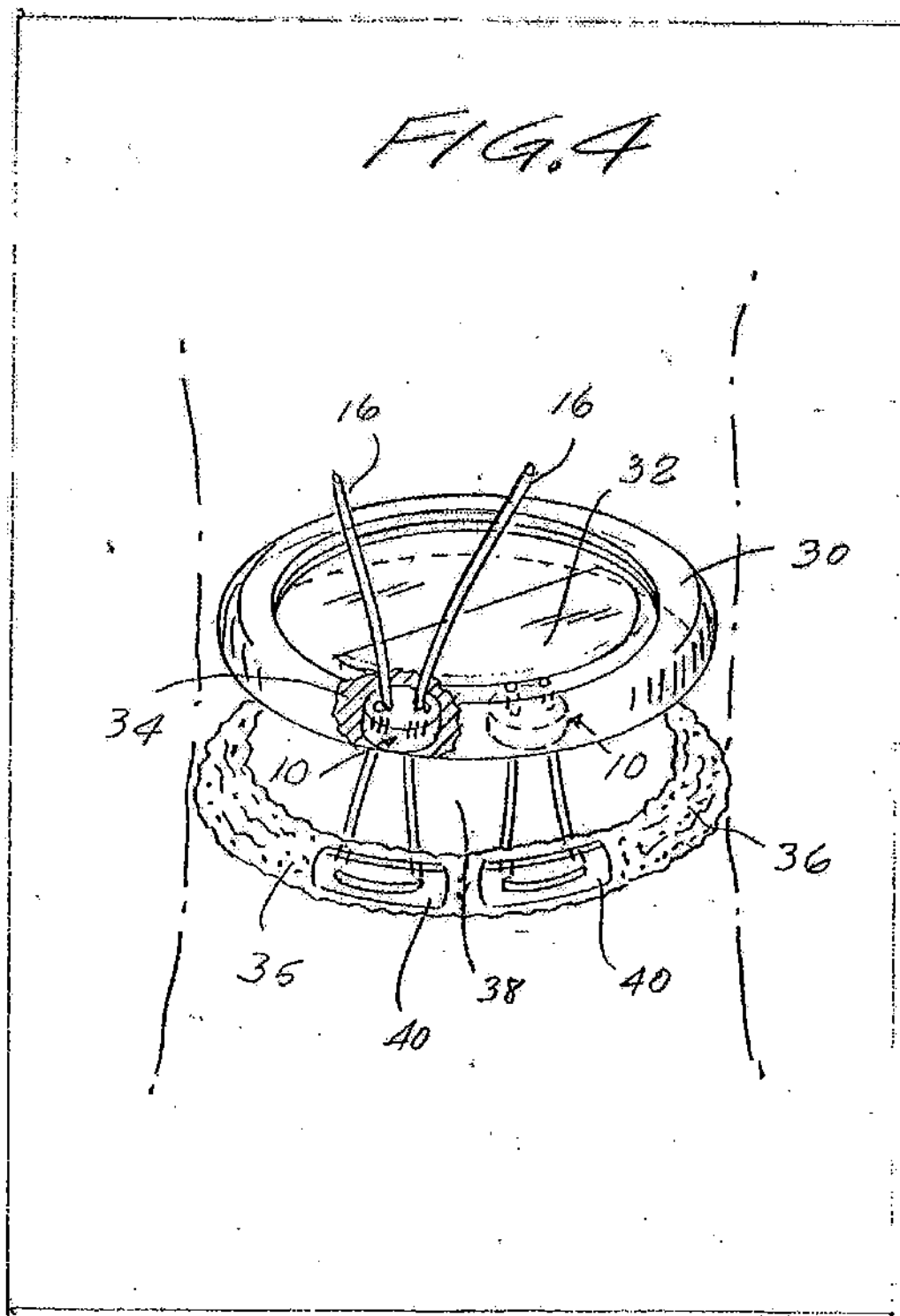
Freeport, New York 11520

JOSEPH T. MINUTELLO  
Notary Public, State of New York  
No. 4098569  
Qualified in New York County  
Commission Expires 8/20/99.

Joseph T. Minutello

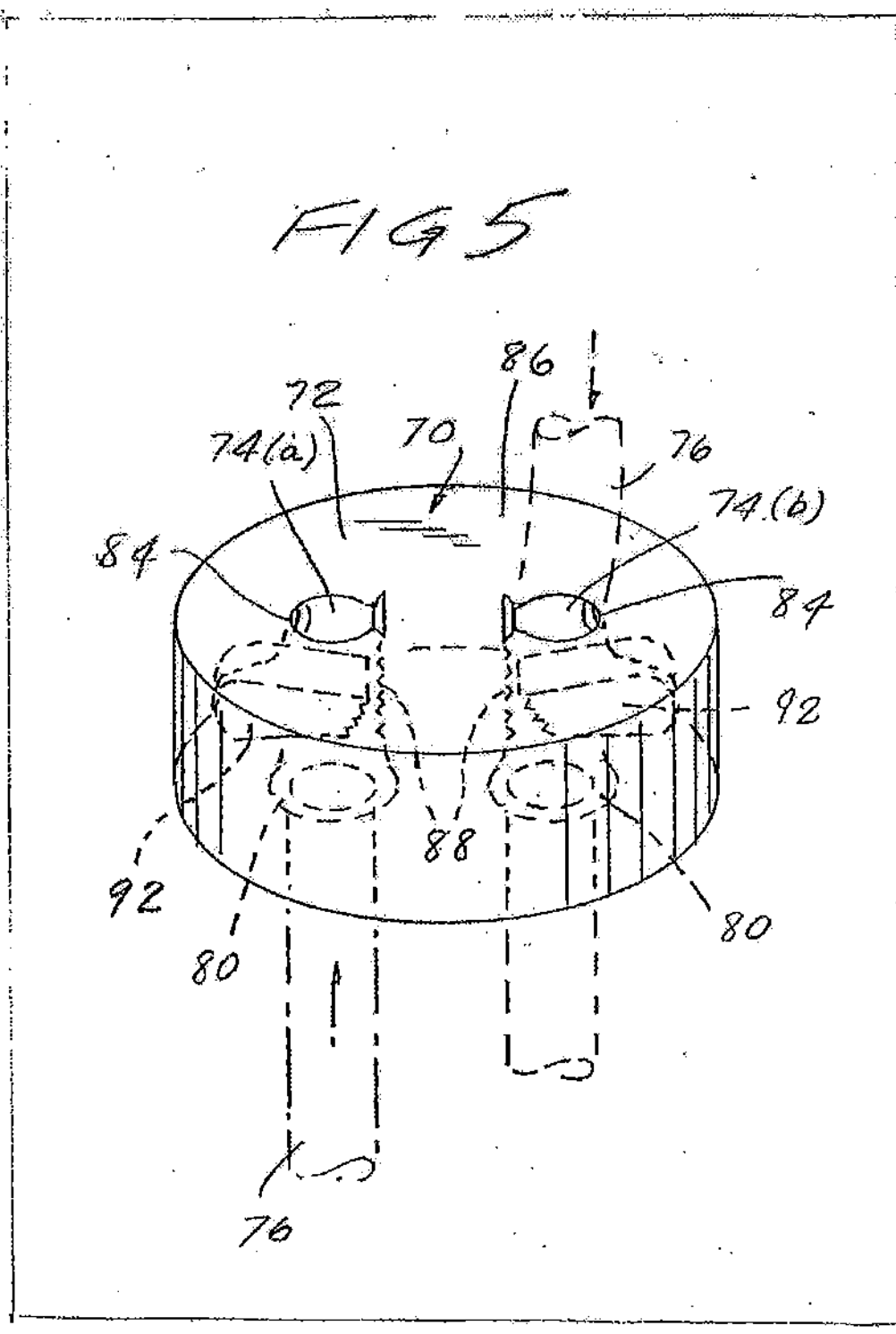




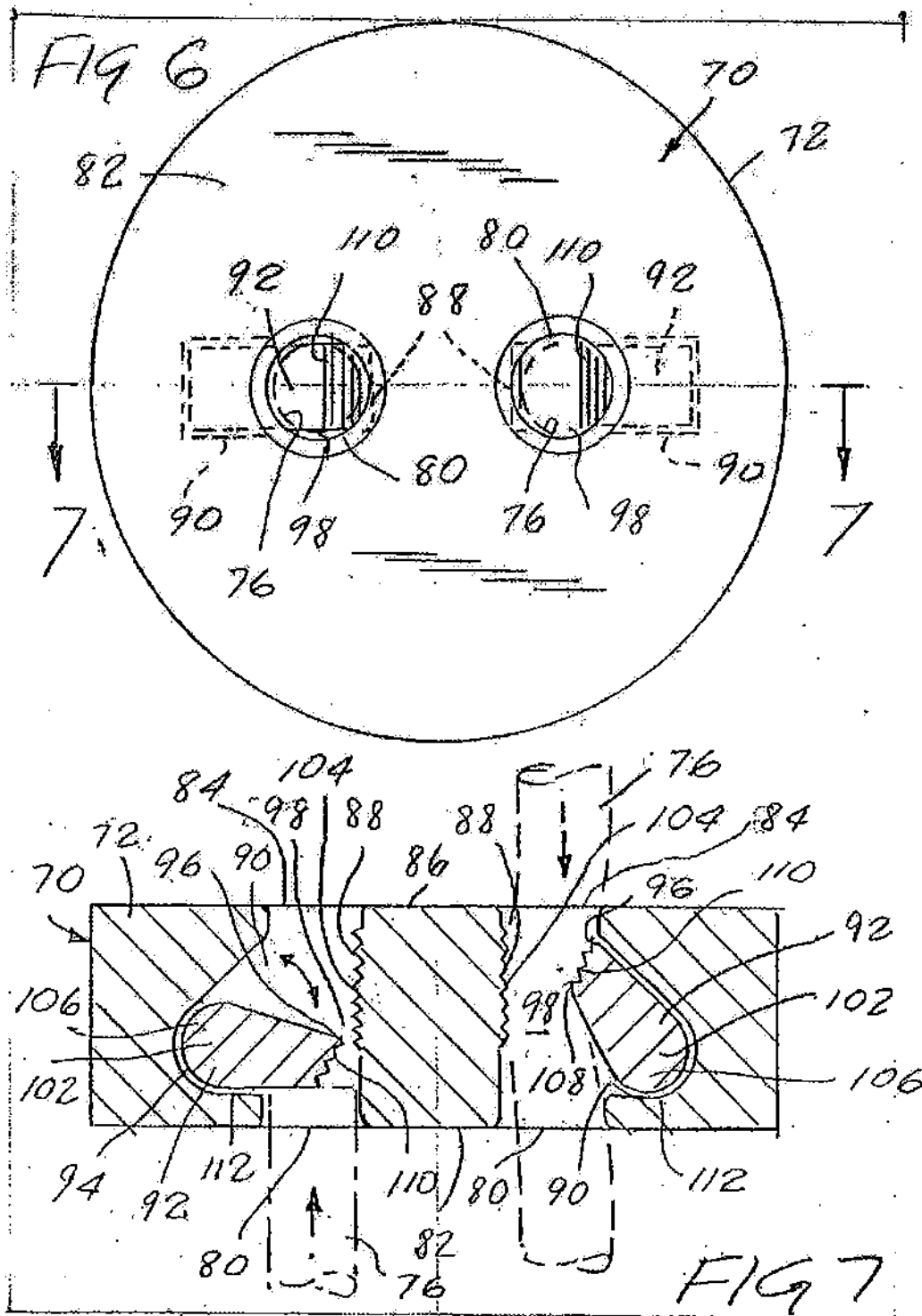


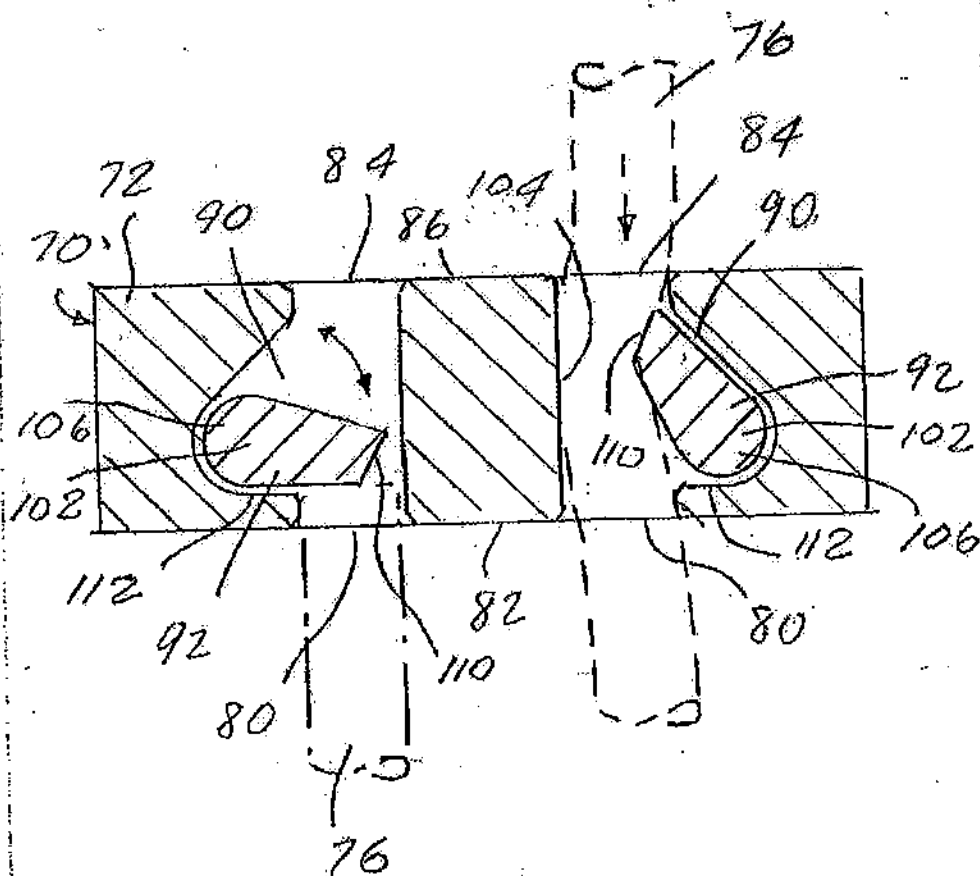
RS000173





RS000174





# EXHIBIT L

**HAZARD** LLP

NEW OFFICES

GOODWIN SQUARE  
HARTFORD, CONNECTICUT 06103-4302  
860/522-5175 FACSIMILE 860/522-2788

DAVID URBANIK  
Executive Director  
Direct Dial: (860) 241-2658  
durbanik@pepehazard.com

May 4, 2001

BY FAX AND FIRST CLASS MAIL

Quickie, LLC  
c/o Alan Fell, Esq.  
Rick, Steiner P.C.  
Three New York Plaza  
New York, NY 10004

Re: Transfer of Legal Matters/Documentation

Dear Mr. Fell:

As you may know, Todd Sharinn, who has handled various matters for you, will be leaving Pepe & Hazard soon to start his own firm. We very much regret losing Todd, but wish him well.

His departure, however, raises the question of responsibility for your files in the above-captioned matters. If you wish our firm to continue its representation, we would be pleased to do so. If, on the other hand, you wish Mr. Sharinn to assume responsibility for these cases, we will transfer the files to him.

Please indicate below whether you would like the files to be transferred, and return a signed copy of this letter to me either by fax at 860-522-2796 or by returning same in the enclosed self-addressed envelope. In the interim, if you have any questions you may contact Todd directly at 860-242-2977.

Sincerely,



David Urbanik

cc: Todd S. Sharinn, Esq.



EAY/29620/1/527249/1  
05/04/01-ERT/EAY  
P.E.  
NO. 428

BOSTON

NEW

HARTFORD

NEW

SOUTHPORT

PEPE&HAZARD BUS SVC

3:00PM

MAY 7, 2001

RS001953

PEPPER HAZARD LLP

January 15, 2001  
Page 2

I hereby request that the files set forth above be transferred to Attorney Todd Sharinn.

	<u>Please Transfer</u>	<u>Please Do Not Transfer</u>
Novel Knotless Suture System For Use In	✓	
Ethicon Endo-Surgery, Inc.	✓	
U.S. Surgical	✓	
Suture Termination Device	✓	
General Corp	✓	
Sutureless System For Attachment	✓	
Medtronic License Agreement	✓	

A. Q. Fell  
5/14/01  
Date

NO. 402 P. 4  
05/04/01-EXT/EAY  
EAY/29620/1/57249-1

PEPPER HAZARD BUS SVC MAY 17 2001 3:00PM

RS001954

# **EXHIBIT M**

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAUBIG**

02/24/10 11:11

**Transmittal Cover Sheet**

**TO** Marsha Twitty  
**Company** U.S. Patent and Trademark Office  
**Fax Number** 703-305-1013  
**Phone Number** 703-308-9692  
**FROM** Linda Garramone  
**File Number** 51822.010700  
**Comments** Change of Correspondence Address and Fee Address Indication Form

**Date** December 16, 2002  
**No. Pages** Including this cover sheet 4

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885 Third Avenue, New York, New York 10022 (212) 801-2100 Fax (212) 688-2449



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## MESSAGE CONFIRMATION

12/16/2002 12:21  
ID=GREENBERG/TRAURIG

DATE	S-R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
12/16	02:00"	7033051013	TX	004	OK 0000

12/16/2002 12:18 GREENBERG/TRAURIG → 51822#010700#17033051013 NO. 984 0001

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

02/16/03 12:21

### Transmittal Cover Sheet

<b>TO</b>	Marsha Twitty
<b>Company</b>	U.S. Patent and Trademark Office
<b>Fax Number</b>	703-305-1013
<b>Phone Number</b>	703-308-9692
<b>FROM</b>	Linda Garramone
<b>File Number</b>	51822.010700
<b>Comments</b>	Change of Correspondence Address and Fee Address Indication Form

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Please type a plus sign (+) inside this box 

PTO/SB/123 (10-00)




Approved for use through 10/31/2002. OMB 0551-0035

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>CHANGE OF CORRESPONDENCE ADDRESS</b> <b>Patent</b>  Address to: Assistant Commissioner for Patents Washington, D.C. 20231	Patent Number	6,066,160
	Issue Date	May 23, 2000
	Application Number	09/198,087
	Filing Date	November 23, 1998
	First Named Inventor	Colvin

Please change the Correspondence Address for the above-identified patent to:

☐ Customer Number   

OR

☐ Type Customer Number here

Firm or Individual Name	Todd S. Sharinn				
Address	Greenberg Traurig, LLP				
Address	885 Third Avenue, 21st Floor				
City	New York	State	NY	ZIP	10022
Country	US				
Telephone	212-801-2157		Fax	212-688-2449	

This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

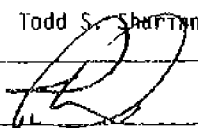
This form will not affect any "fee address" provided for the above-identified patent. To change a "fee address" use the "Fee Address Indication Form" (PTO/SB/47).

I am the:

☐ Patentee.

☐ Assignee of record of the entire interest. See 37 CFR 3.71 Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

☒ Attorney or agent of record.

Typed or Printed Name	Todd S. Sharinn
Signature	
Date	October 22, 2002

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of \_\_\_\_\_ forms are submitted.

Burden Hour Statement: This form is estimated to take 3 minutes to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

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PTO/SB/47 (03-02)

Approved for use through 12/31/2002. OMB 0851-0016

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**"FEE ADDRESS" INDICATION FORM**

Address to:  
 Assistant Commissioner for Patents  
 Box M Correspondence  
 Washington, D.C. 20231

**INSTRUCTIONS:** Only an address associated with a Customer Number can be established as the fee address for maintenance fee purposes (hereafter, fee address). A fee address should be specified when the patentee would like correspondence related to maintenance fees to be mailed to a different address than the correspondence address for the application. If there is a Customer Number already associated with the fee address for the patent or allowed application, check the first box below and provide the Customer Number in the space provided. If there is no Customer Number associated with the fee address for the patent or allowed application, you must check the second box below and attach a Request for Customer Number form (PTO/SB/125). For more information on Customer Numbers, see the Manual of Patent Examining Procedure (MPEP) Section 403.

Please recognize as the "Fee Address" under the provisions of 37 CFR 1.303 the following address associated with the following customer number.

- ☒ Customer Number 32361
- OR**
- ☐ Request for Customer Number (PTO/SB/125) attached hereto



in the following listed application(s) for which the Issue Fee has been paid or patent(s).

PATENT NUMBER (if known)	APPLICATION NUMBER
6,066,160	

(check one)

- ☐ Applicant/Inventor
- ☒ Attorney or agent of record 42,144  
 (Reg. No.)
- ☐ Assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed enclosed. (Form PTO/SB/06)
- ☐ Assignment recorded at \_\_\_\_\_ From \_\_\_\_\_

Signature

Todd S. Sharinn

Typed or printed name

212-801-2157

Requester's telephone number

October 22, 2002

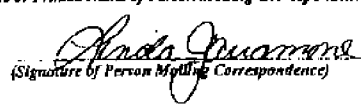
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ \*Total of \_\_\_\_\_ forms are submitted.

**Burden Hour Statement:** This collection of information is required by 37 CFR 1.363. This information is used by the public to submit (and by the USPTO to process) payment of patent maintenance fees. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 0.08 hours to complete, including gathering, preparing, and submitting the complete payment of maintenance fees. Time will vary depending on the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

GT 0000383

<b>CERTIFICATE OF MAILING BY FIRST CLASS MAIL (37 CFR 1.8)</b>			Docket No. <b>51822.010700</b>
Applicant(s): <b>Cohn et al.</b>			
Serial No. <b>09/198,087</b>	Filing Date <b>November 23, 1998</b>	Examiner <b>Gary Jackson</b>	Group Art Unit <b>3731</b>
Invention: <b>PASSIVE KNOTLESS SUTURE TERMINATOR FOR USE IN MINIMALLY INVASIVE SURGERY AND TO FACILITATE STANDARD TISSUE SECURING</b>			
<p>I hereby certify that this <u>Change of Correspondence Address, Fee Address Indication Form &amp; Post Card</u>  <small>(Identify type of correspondence)</small></p> <p>is being deposited with the United States Postal Service as first class mail in an envelope addressed to: The Assistant Commissioner for Patents, Washington, D.C. 20231 on <u>October 22, 2002</u>  <small>(Date)</small></p> <p style="text-align: center;"><u>Linda Garramone</u>  <small>(Typed or Printed Name of Person Mailing Correspondence)</small></p> <p style="text-align: center;">  <small>(Signature of Person Mailing Correspondence)</small></p> <p style="text-align: center;">Note: Each paper must have its own certificate of mailing.</p>			

P07AMIEV03

GT 0000384

# **EXHIBIT N**

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Todd S. Sharinn  
212-801-2157  
sharinn1@gtlaw.com

February 12, 2003

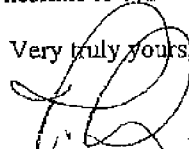
Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

Re: Quickie, LLC  
Our Ref. 51822.010000

Dear Alan:

Enclosed please find our invoice no. 999539 for an amount of \$568.18 for legal services and expenses rendered through and including January 31, 2002.

If you have any questions, please do not hesitate to contact me.

Very truly yours,  
  
Todd S. Sharinn

TSS:ai  
Enclosures

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE  
NEW YORK, NEW YORK 10022-4834  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS003054

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Invoice No. : 999539  
File No. : 51822.010000  
Bill Date : February 12, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Alan L. Fell, Esq.

**INVOICE**

Re: General

Legal Services through January 31, 2003:

Total Fees: \$ 350.00

Expenses:

Federal Express Charges 11.63  
Photocopy Charges 4.05

Total Expenses: \$ 15.68

Current Invoice: \$ 365.68

Previous Balance (see attached statement): \$ 202.50

Total Amount Due: \$ 568.18

TOS:AM  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON ZURICH

RS003055

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No.: 999539  
File No.: 51822.010000

**Account Statement**

Date	Invoice #	Fees Due	Expenses Due	Other Due	Total Due
08/09/02	920624	202.50	0.00	0.00	202.50
	Totals:	\$ 202.50	\$ 0.00	\$ 0.00	\$ 202.50

TOS:AM  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
895 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON ZURICH

RS003056



Invoice No.: 999539  
Re: General  
Matter No.: 51822.010000

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
01/03/03	Todd S. Sharinn	Prepare patent application (1.0).	1.00	350.00
<u>Total Time:</u>			1.00	
<u>Total Fees:</u>				\$ 350.00

RS003057

Invoice No.: 999539  
Re: General  
Matter No.: 51822.010000

Page 2

Description of Expenses Billed:

DATE	DESCRIPTION	AMOUNT
12/03/02	Copy, 4 Page(s) by 3171	\$ 0.60
12/04/02	Copy, 6 Page(s) by 3171	\$ 0.90
12/13/02	VENDOR: FedEx INVOICE#: 912576024 DATE: 12/27/2002 Tracking #411538309744; From: TODD SHARINN, GREENBERG TRAURIG LLP, 885 3RD AVE FL 21, NEW YORK, NY 100224898; To: MARK F. EVENS,ESQ, THELEN REID & PRIEST LLP, 701 PENNSYLVANIA AVENUE, N.W., WASHINGTON, DC 200040000	\$ 11.63
01/09/03	Copy, 13 Page(s) by 3171	\$ 1.95
01/15/03	Copy, 4 Page(s) by 3171	\$ 0.60
Total Expenses:		\$ 15.68

RS003058

GREENBERG  
ATTORNEYS AT LAW  
THAURIG

Todd S. Sharinn  
212-801-2157  
sharinn@gtlaw.com

April 9, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

Re: Quickie, LLC  
Our Ref. 51822.010000

Dear Alan:

Enclosed please find our invoice no. 1022875 for an amount of \$638.18 for legal services and expenses rendered through and including March 31, 2003.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

  
Todd S. Sharinn

TSS:ai  
Enclosures

GREENBERG THAURIG, LLP  
885 THIRD AVENUE  
NEW YORK, NEW YORK 10022-4834  
212-801-2100 FAX 212-683-2449 www.gtlaw.com  
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS003061

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Invoice No. : 1022875  
File No. : 51822.010000  
Bill Date : April 8, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Alan L. Fell, Esq.

**INVOICE**

Re: General

Legal Services through March 31, 2003:

Total Fees:	\$	70.00
Current Invoice:	\$	<u>70.00</u>
Previous Balance (see attached statement):	\$	568.18
Total Amount Due:	\$	<u>638.18</u>

TOS:AM  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 [www.gtaw.com](http://www.gtaw.com)  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON ZURICH

RS003062

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No.: 1022875  
File No.: 51822.010000

**WIRING INSTRUCTIONS FOR GT FIRM ACCOUNT**  
**FOR FEES & COSTS ARE AS FOLLOWS:**

TO: CITIBANK, F.S.B.  
ABA #: 266086554  
CREDIT TO: GREENBERG TRAUIG ACCOUNT  
ACCOUNT #: 3200175071

PLEASE  
REFERENCE: CLIENT NAME: QUICKIE, LLC  
FILE NUMBER: 51822.010000  
INVOICE NUMBER: 1022875  
ATTORNEY NAME: Todd S. Sharinn

TOS:AM  
Tax ID: 13-3613083

GREENBERG TRAUIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 [www.gtlaw.com](http://www.gtlaw.com)  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON ZURICH

RS003063

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No. : 1022875  
File No. : 51822.010000

**Account Statement**

Date	Invoice #	Fees Due	Expenses Due	Other Due	Total Due
08/09/02	920624	202.50	0.00	0.00	202.50
02/12/03	999539	350.00	15.68	0.00	365.68
Totals:		\$ 552.50	\$ 15.68	\$ 0.00	\$ 568.18

TOS:AM  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
605 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-601-2100 FAX 212-608-2449 [www.gtlaw.com](http://www.gtlaw.com)

AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON ZURICH

RS003064

Invoice No.: 1022875  
Re: General  
Matter No.: 51822.010000

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
03/27/03	Todd S. Sharinn	Letter to Dr. Colvin regarding status and strategy for various pending matters (.2).	0.20	70.00
			<u>Total Time:</u>	
			0.20	
			<u>Total Fees:</u>	\$ 70.00

RS003065

Invoice No.: 1022875  
Re: General  
Matter No.: 51822.010000

Page 2

Description of Expenses Billed:

DATE	DESCRIPTION	AMOUNT
------	-------------	--------

No expenses charged to this file

RS003066



# Greenberg Traurig

Todd S. Sharinn  
212-801-2157

September 23, 2004

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Rick Steiner

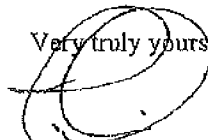
Re: Outstanding Statement  
For: \$435.68  
Client Number: 51822

Dear Rick:

Enclosed please find our outstanding statement of invoices as of August 31, 2004.  
Thank you in advance for your assistance in processing these payment.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours



Todd S. Sharinn

Enclosure

ALBANY  
AMSTERDAM  
ATLANTA  
BOCA RATON  
BOSTON  
CHICAGO  
DALLAS  
DENVER  
FORT LAUDERDALE  
LOS ANGELES  
MIAMI  
NEW JERSEY  
NEW YORK  
ORANGE COUNTY, CA  
ORLANDO  
PHILADELPHIA  
PHOENIX  
SILICON VALLEY  
TALLAHASSEE  
TYSONS CORNER  
WASHINGTON, D.C.  
WEST PALM BEACH  
WILMINGTON  
ZURICH

Any2-B11753451v01

Greenberg Traurig, LLP | Attorneys at Law | 885 Third Avenue | New York, NY 10022-4834 | Tel 212.801.2100 | Fax 212.688.2449

www.gtllaw.com

RS003038

# Greenberg Traurig

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, NY 10004

Attn: Rick Steiner

Outstanding invoices as of August 31, 2004

File Number	Titled	Invoice #	Dated	Billed thru	Invoice Balance Due
51822.010000	General	999539	02/12/03	01/31/03	365.68
		1022875	04/08/03	03/31/03	70.00
					<hr/>
				Balance due this file	\$ 435.68
					<hr/>
				Total client balance	\$ 435.68
					<hr/>

TOS:AM

Page 1

GREENBERG TRAURIG, LLP  
MET LIFE BUILDING  
200 PARK AVENUE, NEW YORK, NEW YORK 10166  
212-801-9200 FAX 212-801-6400 [www.gtlaw.com](http://www.gtlaw.com)  
MIAMI NEW YORK WASHINGTON, D.C. ATLANTA PHILADELPHIA TYSONS CORNER SAO PAULO  
FORT LAUDERDALE WEST PALM BEACH ORLANDO TALLAHASSEE BOCA RATON CHICAGO

RS003039

GREENBERG  
ATTORNEYS AT LAW  
TRAUBIG

Todd S. Sharinn  
212-801-2157  
sharinn@gilew.com

April 9, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

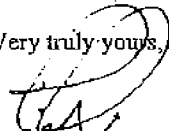
Re: Quickie, LLC  
Passive Knotless Suture Terminating System  
Our Ref. 51822.010100

Dear Alan:

Enclosed please find our invoice no. 1022145 for a total amount of \$90.59 for legal services and expenses rendered through and including March 31, 2003.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Todd S. Sharinn

TSS:ai  
Enclosures

GREENBERG TRAUBIG, LLP  
805 THIRD AVENUE  
NEW YORK, NEW YORK 10022-4834  
212-801-2100 FAX 212-688-2449 www.gtlew.com  
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS003049

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No. : 1022145  
File No. : 51822.010100  
Bill Date : April 7, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Alan L. Fell, Esq.

**INVOICE**

Re: Passive Knotless Suture Terminating System

Expenses:

Facsimile Charges	18.00
Photocopy Charges	0.30

Total Expenses: \$ 18.30

Current Invoice: \$ 18.30

Previous Balance (see attached statement): \$ 72.29

Total Amount Due: \$ 90.59

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtllaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS003050

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No. : 1022145  
File No. : 51822.010100

**WIRING INSTRUCTIONS FOR GT FIRM ACCOUNT  
FOR FEES & COSTS ARE AS FOLLOWS:**

TO: CITIBANK, F.S.B.  
ABA #: 266086554  
CREDIT TO: GREENBERG TRAURIG ACCOUNT  
ACCOUNT #: 3200175071

PLEASE  
REFERENCE: CLIENT NAME: QUICKIE, LLC  
FILE NUMBER: 51822.010100  
INVOICE NUMBER: 1022145  
ATTORNEY NAME: Paul J. Sutton

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-601-2100 FAX 212-688-2449 www.gtlaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS003051

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No.: 1022145  
File No.: 51822.010100

**Account Statement**

Date	Invoice #	Fees Due	Expenses Due	Other Due	Total Due
07/15/02	911669	0.00	22.65	0.00	22.65
09/09/02	930762	0.00	49.64	0.00	49.64
<b>Totals:</b>		<b>\$ 0.00</b>	<b>\$ 72.29</b>	<b>\$ 0.00</b>	<b>\$ 72.29</b>

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS003052

Invoice No.: 1022145  
Re: Passive Knotless Suture Terminating System  
Matter No.: 51822 010100

Page 2

Description of Expenses Billed:

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
12/10/02	Facsimile; 2632246, 9 Page(s) by 3171	\$ 9.00
12/10/02	Facsimile; 4220158, 9 Page(s) by 4776	\$ 9.00
12/10/02	Copy; 2 Page(s) by 3171	\$ 0.30
Total Expenses:		\$ 18.30

RS003053

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Todd S. Sharinn  
212-801-2157  
sharinn@gdlaw.com

November 12, 2002

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

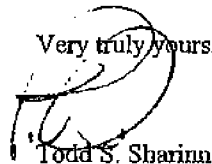
Re: Quickie, LLC  
Concentric Passive Knotless Suture Terminator  
Our Ref. 51822.010200

Dear Alan:

Enclosed please find our invoice no. 960926 for a total amount of \$474.67 for legal services and expenses rendered through and including October 31, 2002.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Todd S. Sharinn

TSS:ai  
Enclosures

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE  
NEW YORK, NEW YORK 10022-4834  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS002800



**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No.: 960926  
File No.: 51822.010200  
Bill Date: November 11, 2002

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Alan L. Fell, Esq.

**INVOICE**

Re: Concentric Passive Knotless Suture Terminator

Legal Services through October 31, 2002:

Total Fees: \$ 346.50

Expenses:

Photocopy Charges  
Postage

1.80

0.37

Total Expenses: \$ 2.17

Current Invoice: \$ 348.67

Previous Balance (see attached statement): \$ 126.00

Total Amount Due: \$ 474.67

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-848-1000 FAX 212-688-2449 www.gtlaw.com  
MIAMI NEW YORK WASHINGTON, D.C. LOS ANGELES CHICAGO BOSTON PHOENIX DENVER ATLANTA TYSONS CORNER  
PHILADELPHIA WILMINGTON ORLANDO TALLAHASSEE WEST PALM BEACH BOCA RATON FORT LAUDERDALE SAO PAULO

RS002801

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No.: 960926  
File No.: 51822.010200

**Account Statement**

<u>Date</u>	<u>Invoice #</u>	<u>Fees Due</u>	<u>Expenses Due</u>	<u>Other Due</u>	<u>Total Due</u>
06/18/02	900850	126.00	0.00	0.00	126.00
	Totals:	\$ 126.00	\$ 0.00	\$ 0.00	\$ 126.00

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-848-1000 FAX 212-688-2449 www.gtlaw.com  
MIAMI NEW YORK WASHINGTON, D.C. LOS ANGELES CHICAGO BOSTON PHOENIX DENVER ATLANTA TYSONS CORNER  
PHILADELPHIA WILMINGTON ORLANDO TALLAHASSEE WEST PALM BEACH BOCA RATON FORT LAUDERDALE SAO PAULO

RS002802

Invoice No.: 960926  
Re: Concentric Passive Knotless Suture Terminator  
Matter No.: 51822.010200

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
10/24/02	Todd S. Sharinn	Review file and related prior art reference provided by Dr. Colvin.	0.80	252.00
10/28/02	Todd S. Sharinn	telephone conference with G. Grossi regarding patent application identified by Medtronic (.3).	0.30	94.50
			<u>Total Time:</u>	
			1.10	
			<u>Total Fees:</u>	\$ 346.50

RS002803

Invoice No.: 960926  
Re: Concentric Passive Knotless Suture Terminator  
Matter No.: 51822.010200

Page 2

Description of Expenses Billed:

DATE	DESCRIPTION	AMOUNT
09/20/02	Copy; 7 Page(s) by 2157	\$ 1.05
10/18/02	Copy; 5 Page(s) by 2157	\$ 0.75
10/18/02	Postage by 1784	\$ 0.37
Total Expenses:		\$ 2.17

RS002804

Todd S. Sharinn  
212-801-2157  
tskarinn@gilew.com

April 9, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

Re: Quickie, LLC  
Concentric Passive Knotless Suture Terminator  
Our Ref. 51822.010200

Dear Alan:

Enclosed please find our invoice no. 1022147 for a total amount of \$615.12 for legal services and expenses rendered through and including March 31, 2003.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Todd S. Sharinn

TSS:ai  
Enclosures

GREENBERG TRAUBIG, LLP

RS002794

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Invoice No.: 1022147  
File No.: 51822.010200  
Bill Date: April 7, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Alan L. Fell, Esq.

**INVOICE**

Re: Concentric Passive Knotless Suture Terminator

Legal Services through March 31, 2003:

Total Fees: \$ 140.00

Expenses:

Photocopy Charges

0.45

Total Expenses: \$ 0.45

Current Invoice: \$ 140.45

Previous Balance (see attached statement): \$ 474.67

Total Amount Due: \$ 615.12

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 [www.gtlaw.com](http://www.gtlaw.com)  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS002795

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No. : 1022147  
File No. : 51822.010200

**WIRING INSTRUCTIONS FOR GT FIRM ACCOUNT  
FOR FEES & COSTS ARE AS FOLLOWS:**

TO: CITIBANK, F.S.B.  
ABA #: 266086554  
CREDIT TO: GREENBERG TRAURIG ACCOUNT  
ACCOUNT #: 3200175071

PLEASE  
REFERENCE: CLIENT NAME: QUICKIE, LLC  
FILE NUMBER: 51822.010200  
INVOICE NUMBER: 1022147  
ATTORNEY NAME: Paul J. Sutton

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 [www.gtlaw.com](http://www.gtlaw.com)  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS002796

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No. : 1022147  
File No. : 51822.010200

**Account Statement**

Date	Invoice #	Fees Due	Expenses Due	Other Due	Total Due			
06/18/02	900850	126.00	0.00	0.00	126.00			
11/11/02	960926	346.50	2.17	0.00	348.67			
Totals:	\$	472.50	\$	2.17	\$	0.00	\$	474.67

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS002797



Invoice No.: 1022147  
Re: Concentric Passive Knotless Suture Terminator  
Matter No.: 51822.010200

Page 1

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>AMOUNT</u>
02/20/03	Todd S. Sharinn	Status inquiry and letter to client (4).	0.40	140.00
			<u>Total Time:</u>	
			0.40	
			<u>Total Fees:</u>	\$ 140.00

RS002798

Invoice No.: 1022147  
Re: Concentric Passive Knotless Suture Terminator  
Matter No.: 51822.010200

Page 2

Description of Expenses Billed:

DATE	DESCRIPTION	AMOUNT
02/21/03	Copy; 2 Page(s) by 3171	\$ 0.30
02/21/03	Copy; 1 Page(s) by 3171	\$ 0.15
Total Expenses:		\$ 0.45

RS002799

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No.: 1129334  
File No.: 51822.010200  
Bill Date: November 14, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Rick Steiner

**INVOICE**

Re: Concentric Passive Knotless Suture Terminator

Legal Services through October 31, 2003:

Total Fees: \$ 1,575.00

Expenses:

Photocopy Charges 10.95  
Postage 16.14

Total Expenses: \$ 27.09

Current Invoice: \$ 1,602.09

Previous Balance (see attached statement): \$ 2,776.02

Total Amount Due: \$ 4,378.11

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS002812

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No. : 1129334  
File No. : 51822.010200

**FOR YOUR CONVENIENCE,  
WIRING INSTRUCTIONS FOR GT FIRM ACCOUNT  
FOR FEES & COSTS ARE AS FOLLOWS:**

TO: CITIBANK, F.S.B.  
ABA #: 266086554  
CREDIT TO: GREENBERG TRAURIG ACCOUNT  
ACCOUNT #: 3200175071

PLEASE  
REFERENCE: CLIENT NAME: QUICKIE, LLC  
FILE NUMBER: 51822.010200  
INVOICE NUMBER: 1129334\*  
ATTORNEY NAME: Paul J. Sutton

\* If paying more than one invoice, please reference all invoice numbers in wiring instructions.

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
685 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-681-2949 www.gtlaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS002813

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAUBIG**

Invoice No.: 1129334  
File No.: 51822.010200

**Account Statement**

Date	Invoice #	Fees Due	Expenses Due	Other Due	Total Due
06/18/02	900850	126.00	0.00	0.00	126.00
11/11/02	960926	346.50	2.17	0.00	348.67
04/07/03	1022147	140.00	0.45	0.00	140.45
10/14/03	1112914	2,160.00	0.90	0.00	2,160.90
	<b>Totals:</b>	<b>\$ 2,772.50</b>	<b>\$ 3.52</b>	<b>\$ 0.00</b>	<b>\$ 2,776.02</b>

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAUBIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com

AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS002814

Invoice No.: 1129334  
 Re: Concentric Passive Knotless Suture Terminator  
 Matter No.: 51822.010200

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
10/08/03	Todd S. Sharinn	Review file; review office action; review and revise response to office action.	3.50	1225.00
10/28/03	Todd S. Sharinn	Telephone interview with patent examiner; revise specification and claims.	1.00	350.00
			<u>Total Time:</u>	
			<u>Total Fees:</u>	\$ 1,575.00

RS002815

Invoice No.: 1129334  
 Re: Concentric Passive Knobless Switch Terminator  
 Matter No.: 51822,010200

Page 2

Description of Expenses Billed:

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
09/24/03	Copy, 34 Page(s) by 2157	\$ 5.10
09/24/03	Postage by 8654	\$ 1.66
10/08/03	Copy, 11 Page(s) by 2157	\$ 1.85
10/08/03	Postage by 4776	\$ 13.65
10/09/03	Copy, 15 Page(s) by 2157	\$ 2.25
10/09/03	Postage by 3933	\$ 0.83
10/28/03	Copy, 13 Page(s) by 2157	\$ 1.95
Total Expenses:		\$ 27.09

RS002816

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No.: 1157465  
File No.: 51822-010200  
Bill Date: January 20, 2004

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Rick Steiner

**INVOICE**

Re: Concentric Passive Knotless Suture Terminator

Legal Services through December 31, 2003:

Total Fees: \$ 175.00

Expenses:

Facsimile Charges 28.00  
New York PTO Filing Fee - 110.00  
Electronic  
Postage 3.64

Total Expenses: \$ 141.64

Current Invoice: \$ 316.64

Previous Balance (see attached statement): \$ 4,378.11

Total Amount Due: \$ 4,694.75

PS:YA  
Tax ID: 13-3613083

GREENBERG-TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
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JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS002806



**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No.: 1157465  
File No. : 51822.010200

**FOR YOUR CONVENIENCE,  
WIRING INSTRUCTIONS FOR GT FIRM ACCOUNT  
FOR FEES & COSTS ARE AS FOLLOWS:**

TO: CITIBANK, F.S.B.  
ABA #: 266086554  
CREDIT TO: GREENBERG TRAURIG ACCOUNT  
ACCOUNT #: 3200175071

PLEASE  
REFERENCE: CLIENT NAME: QUICKIE, LLC  
FILE NUMBER: 51822.010200  
INVOICE NUMBER: 1157465\*  
ATTORNEY NAME: Paul J. Sutton

\* If paying more than one invoice, please reference all invoice numbers in wiring instructions.

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
685 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-601-2100 FAX 212-686-2449 www.gtlaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS002807

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No.: 1157465  
File No. : 51822.010200

**Account Statement**

Date	Invoice #	Fees Due	Expenses Due	Other Due	Total Due
06/18/02	900850	126.00	0.00	0.00	126.00
11/11/02	960926	346.50	2.17	0.00	348.67
04/07/03	1022147	140.00	0.45	0.00	140.45
10/14/03	1112914	2,160.00	0.90	0.00	2,160.90
11/14/03	1129334	1,575.00	27.09	0.00	1,602.09
<b>Totals:</b>		<b>\$ 4,347.50</b>	<b>\$ 30.61</b>	<b>\$ 0.00</b>	<b>\$ 4,378.11</b>

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com

AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS002808

Invoice No.: 1157465  
 Re: Concentric Passive Knotless Suture Terminator  
 Matter No.: 51822.010200

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
12/01/03	Todd S. Sharinn	Review Notice of Allowance and notice of allowability; prepare letters to Alan Fall and Dr. Colvin re: same.	0.50	175.00
			<u>Total Time:</u>	
			<u>Total Fees:</u>	\$ 175.00

RS002809

Invoice No.: 1157465  
 Re: Concentric Passive Knotless Suture Terminator  
 Matter No.: 51322.010200

Page 2

Description of Expenses Billed:

DATE	DESCRIPTION	AMOUNT
11/03/03	USPTO Fee: Petition for extension of time. Serial No. 09/660,745.	\$ 110.00
11/03/03	Postage by 4776	\$ 1.98
12/02/03	Facsimile, 12124220158, 14 Page(s) by 2157	\$ 14.00
12/02/03	Facsimile, 12122632246, 14 Page(s) by 2157	\$ 14.00
12/02/03	Postage by 3923	\$ 1.66
Total Expenses:		\$ 141.64

RS002810

# Greenberg Traurig

Invoice No. : 1217480  
File No. : 51822.010200  
Bill Date : May 14, 2004

Quickie, LLC  
c/o Rick, Steiner, Segall & Fell, PC  
Attn: Alan Fell, Esq.  
Three New York Plaza  
New York, New York 10004

Attn: Rick Steiner

## INVOICE

Re: Concentric Passive Knotless Suture Terminator

Legal Services through April 30, 2004:

Total Fees: \$ 150.00

Expenses:

Local Travel	6.00
New York PTO Filing Fee -	674.00
Electronic	
Photocopy Charges	1.50
Postage	3.55

Total Expenses: \$ 685.05

Current Invoice: \$ 835.05

Previous Balance (see attached statement): \$ 1,918.73

Total Amount Due: \$ 2,753.78

TOS:AM  
Tax ID: 13-3613083

Greenberg Traurig, LLP | Attorneys at Law | 885 Third Avenue | New York, New York 10022 | Tel 212.804.2100 | Fax 212.688.2449 | [www.gtlaw.com](http://www.gtlaw.com)

RS003176

# Greenberg Taurig

Invoice No. : 1217480  
File No. : 51822.010200

FOR YOUR CONVENIENCE  
WIRING INSTRUCTIONS FOR CREDIT ACCOUNT  
FOR CREDIT CREDIT TO AS FOLLOWS:

TO: CITIBANK, F.S.B.  
ABA #: 266086554  
CREDIT TO: GREENBERG TRAURIG ACCOUNT  
ACCOUNT #: 3200175071

PLEASE  
REFERENCE: CLIENT NAME: QUICKIE, LLC  
FILE NUMBER: 51822.010200  
INVOICE NUMBER: 1217480\*  
BILLING  
PROFESSIONAL: Todd S. Sharinn

\* If paying more than one invoice, please reference all invoice numbers in wiring instructions.

TOS:AM  
Tax ID: 13-3613083

Greenberg Taurig, LLP | Attorneys at Law | 885 Third Avenue | New York, New York 10022 | Tel 212.801.2100 | Fax 212.686.2449 | [www.gtlaw.com](http://www.gtlaw.com)

RS003177

# Greenberg Traurig

Invoice No. : 1217480  
File No. : 51822.010200

## Account Statement

Date	Invoice #	Fees Due	Expenses Due	Other Due	Total Due
11/14/03	1129334	1,575.00	27.09	0.00	1,602.09
01/20/04	1157465	175.00	141.64	0.00	316.64
Totals:		\$ 1,750.00	\$ 168.73	\$ 0.00	\$ 1,918.73

TOS:AM  
Tax ID: 13-3613083

Greenberg Traurig, LLP | Attorneys at Law | 885 Third Avenue | New York, New York 10022 | Tel 212.801.2100 | Fax 212.688.2449 | [www.gtllaw.com](http://www.gtllaw.com)

RS003178

Invoice No.: 1217480  
Re: Concentric Passive Knotless Suture Terminator  
Matter No.: 51822.010200

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
04/13/04	Todd S. Sharinn	Review issued patent for recovery and letter to client.	0.40	150.00
			<u>Total Time:</u>	
			0.40	
			<u>Total Fees:</u>	\$ 150.00

RS003179



Invoice No.: 1217480  
 Re: Concentric Passive Knotless Suture Terminator  
 Matter No.: 51822.010200

Page 2

Description of Expenses Billed:

DATE	DESCRIPTION	AMOUNT
05/19/03	Copy; 10 Page(s) by 3171	\$ 1.50
06/03/03	Train Fare - Court	\$ 6.00
	VENDOR: Juergensen, Paul A.; INVOICE#: 060303A; DATE: 6/3/2003	
	- Petty Cash Reimbursement	
02/18/04	USPTO Fee: Payment of Issue fee.	\$ 665.00
02/18/04	Postage by 8486	\$ 0.60
02/26/04	USPTO Fee: Printed copy of patent matter without color sent via USPS or Electronic means. Serial No. 09/660,745. Billed from charges deducted from the PTO account.	\$ 9.00
04/13/04	Postage by 8486	\$ 2.21
04/14/04	Postage by 1784	\$ 0.74
	Total Expenses:	\$ 685.05

RS003180

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Todd S. Sharinn  
212-801-2157  
sharinn@gtlaw.com

November 12, 2002

Quickie Vision, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

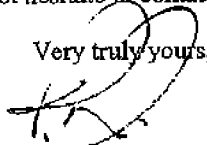
Re: Quickie LLC v. Medtronic  
Our Ref. 51822.010400

Dear Alan:

Enclosed please find our invoice no. 961002 for a total amount of \$61,206.59 for legal services and expenses rendered through and including October 31, 2002.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Todd S. Sharinn

TSS:ai  
Enclosures

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE  
NEW YORK, NEW YORK 10022-4834  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS003087

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No.: 961002  
File No.: 51822.010400  
Bill Date: November 11, 2002

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Alan L. Fell, Esq.

**INVOICE**

Re: Quickie LLC v. Medtronics

Legal Services through October 31, 2002:

Total Fees: \$ 495.00

Expenses:

Facsimile Charges 51.00  
Messenger Services 23.17  
Photocopy Charges 4.50

Total Expenses: \$ 78.67

Current Invoice: \$ 573.67

Previous Balance (see attached statement): \$ 60,632.92

Total Amount Due: \$ 61,206.59

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-648-1000 FAX 212-688-2449 [www.gtlaw.com](http://www.gtlaw.com)  
MIAMI NEW YORK WASHINGTON, D.C. LOS ANGELES CHICAGO BOSTON PHOENIX DENVER ATLANTA TYSONS CORNER  
PHILADELPHIA WILMINGTON ORLANDO TALLAHASSEE WEST PALM BEACH BOCA RATON FORT LAUDERDALE SAO PAULO

RS003088

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No.: 961002  
File No.: 51822.010400

**Account Statement**

Date	Invoice #	Fees Due	Expenses Due	Other Due	Total Due
08/12/02	921521	18,920.52	0.00	0.00	18,920.52
09/09/02	930770	37,133.00	1,975.68	0.00	39,108.68
10/04/02	942637	1,760.00	843.72	0.00	2,603.72
Totals:		\$ 57,813.52	\$ 2,819.40	\$ 0.00	\$ 60,632.92

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212 848-1000 FAX 212-688-2449 [www.gtlaw.com](http://www.gtlaw.com)  
MIAMI NEW YORK WASHINGTON, D.C. LOS ANGELES CHICAGO BOSTON PHOENIX DENVER ATLANTA TYSONS CORNER  
PHILADELPHIA WILMINGTON ORLANDO TALLAHASSEE WEST PALM BEACH BOCA RATON FORT LAUDERDALE SAO PAULO

RS003089

Invoice No.: 961002  
Re: Quickie LLC v. Medtronics  
Matter No.: 51822.010400

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
10/16/02	Paul A. Juergensen	Prepare files for transfer to Thelen Reid & Priest; conferences with Todd Sharinn; telephone conference with Shari Savitt; and letters to Shari Savitt regarding same.	3.30	495.00
			<u>Total Time:</u>	
			<u>Total Fees:</u>	\$ 495.00

RS003090

Invoice No.: 961002  
 Re: Quickie LLC v. Medtronics  
 Matter No.: 51822.010400

Page 2

Description of Expenses Billed:

DATE	DESCRIPTION	AMOUNT
09/03/02	Todd Sharinn 51822.010400 To: Mc Dermott, Will & Emery/50 Rockefeller Plaza on 9/03. Job #10136668 VENDOR: LASERSHIP, INC. - I; INVOICE#: 21001500915; DATE: 9/15/2002 - Account #100150: Charges for 9/01 to 9/15/02.	\$ 14.92
09/05/02	VENDOR: Airline Delivery, Invoice Date: 9/13/2002 - From: TOD SHARINN, 885 3RD AVE, To: DISTRICT COURT, 40 CENTRE ST	\$ 8.25
10/01/02	Facsimile; 2632246, 9 Page(s) by 4776	\$ 9.00
10/01/02	Facsimile; 4220158, 9 Page(s) by 4776	\$ 9.00
10/01/02	Facsimile; 12025084321, 9 Page(s) by 4776	\$ 9.00
10/01/02	Copy; 21 Page(s) by 3171	\$ 3.15
10/03/02	Copy; 9 Page(s) by 3171	\$ 1.35
10/16/02	Facsimile; 4220158, 4 Page(s) by 4776	\$ 4.00
10/16/02	Facsimile; 12025084321, 4 Page(s) by 4776	\$ 4.00
10/16/02	Facsimile; 6032001, 4 Page(s) by 4776	\$ 4.00
10/16/02	Facsimile; 2632246, 4 Page(s) by 4776	\$ 4.00
10/18/02	Facsimile; 4220158, 2 Page(s) by 2157	\$ 2.00
10/18/02	Facsimile; 2632246, 2 Page(s) by 2157	\$ 2.00
10/18/02	Facsimile; 2635534, 2 Page(s) by 2157	\$ 2.00
10/18/02	Facsimile; 12025084321, 2 Page(s) by 2157	\$ 2.00
Total Expenses:		\$ 78.67

RS003091

GREENBERG  
ATTORNEYS AT LAW  
TRAUBIG

Todd S. Sharinn  
212-801-2157  
sharinn@gflaw.com

February 20, 2003

Quickie Vision, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

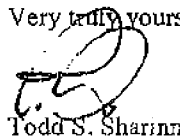
Re: Quickie LLC v. Medtronic  
Our Ref. 51822.010400

Dear Alan:

Enclosed please find our invoice no. 1000231 for a total amount of \$61,261.59 for legal services and expenses rendered through and including January 31, 2002.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Todd S. Sharinn

TSS:ai  
Enclosures

GREENBERG TRAUBIG, LLP  
885 THIRD AVENUE  
NEW YORK, NEW YORK 10022-4834  
212-801-2100 FAX 212-688-2449 www.gflaw.com  
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS003110

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No. : 1000231  
File No. : 51822.010400  
Bill Date : February 12, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Alan L. Fell, Esq.

**INVOICE**

Re: Quickie LLC v. Medtronics

Expenses:

Business Meals	15.00	
Photocopy Charges	40.00	
Total Expenses:	\$	<u>55.00</u>
Current Invoice:	\$	<u>55.00</u>
Previous Balance (see attached statement):	\$	61,206.59
Total Amount Due:	\$	<u>61,261.59</u>

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 [www.gtlaw.com](http://www.gtlaw.com)  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS003111



**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No. : 1000231  
File No. : 51822.010400

**Account Statement**

Date	Invoice #	Fees Due	Expenses Due	Other Due	Total Due
08/12/02	921521	18,920.52	0.00	0.00	18,920.52
09/09/02	930770	37,133.00	1,975.68	0.00	39,108.68
10/04/02	942637	1,760.00	843.72	0.00	2,603.72
11/11/02	961002	495.00	78.67	0.00	573.67
	<b>Totals:</b>	<b>\$ 58,308.52</b>	<b>\$ 2,898.07</b>	<b>\$ 0.00</b>	<b>\$ 61,206.59</b>

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com

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ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON ZURICH

RS003112

Invoice No.: 1000231  
Re: Quickie LLC v. Medtronics  
Matter No.: 51822.010400

Page 2

Description of Expenses Billed:

DATE	DESCRIPTION	AMOUNT
12/22/02	VENDOR: Termaine Tyler, Petty Cash , Custodian; INVOICE#: 123102; DATE: 12/31/2002 - J. James/Lunch-copy project requested by T. Sharinn.	\$ 15.00
12/22/02	VENDOR: Termaine Tyler, Petty Cash , Custodian; INVOICE#: 123102; DATE: 12/31/2002 - J. James/Copy project-10 documents requested by T. Sharinn.	\$ 40.00
Total Expenses:		\$ 55.00

RS003113

*Received*  
5/21/03

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG



Todd S. Sharinn  
212-801-2157  
sharinn@gtlaw.com

May 19, 2003

Quickie Vision, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

Re: Quickie LLC v. Medtronic  
Our Ref. 51822.010400

Dear Alan:

Enclosed please find our invoice no. 1042103 for a total amount of \$47,287.06 for legal services and expenses rendered through and including April 30, 2003.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to be "T. Sharinn".

Todd S. Sharinn

TSS:ai  
Enclosures

GREENBERG TRAURIG, LLP  
635 THIRD AVENUE  
NEW YORK, NEW YORK 10022-4834  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS003102

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Invoice No. : 1042103  
File No. : 51822.010400  
Bill Date : May 13, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Alan L. Fell, Esq.

**INVOICE**

Re: Quickie LLC v. Medtronics

**Expenses:**

Facsimile Charges	23.00
Photocopy Charges	2.10
Postage	0.37

Total Expenses: \$ 25.47

Current Invoice: \$ 25.47

Previous Balance (see attached statement): \$ 47,261.59

Total Amount Due: \$ 47,287.06

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS003103

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No. : 1042103  
File No. : 51822.010400

**WIRING INSTRUCTIONS FOR GT FIRM ACCOUNT  
FOR FEES & COSTS ARE AS FOLLOWS:**

TO: CITIBANK, F.S.B.  
ABA #: 266086554  
CREDIT TO: GREENBERG TRAURIG ACCOUNT  
ACCOUNT #: 3200175071

PLEASE  
REFERENCE: CLIENT NAME: QUICKIE, LLC  
FILE NUMBER: 51822.010400  
INVOICE NUMBER: 1042103  
ATTORNEY NAME: Paul J. Sutton

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS003104

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No. : 1042103  
File No. : 51822.010400

**Account Statement**

<u>Date</u>	<u>Invoice.#</u>	<u>Fees Due</u>	<u>Expenses Due</u>	<u>Other Due</u>	<u>Total Due</u>
08/12/02	921521	4,975.52	0.00	0.00	4,975.52
09/09/02	930770	37,133.00	1,975.68	0.00	39,108.68
10/04/02	942637	1,760.00	843.72	0.00	2,603.72
11/11/02	961002	495.00	78.67	0.00	573.67
<b>Totals:</b>		<b>\$ 44,363.52</b>	<b>\$ 2,898.07</b>	<b>\$ 0.00</b>	<b>\$ 47,261.59</b>

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
685 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com

AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON ZURICH

RS003105

Invoice No.: 1042103  
 Re: Quickie LLC v. Medtronics  
 Matter No.: 51822.010400

Page 2

Description of Expenses Billed:

DATE	DESCRIPTION	AMOUNT
02/20/03	Copy; 4 Page(s) by 3171	\$ 0.60
03/05/03	Copy; 5 Page(s) by 3171	\$ 0.75
03/11/03	Facsimile; 12122632246, 4 Page(s) by 3171	\$ 4.00
03/11/03	Facsimile; 12124220158, 4 Page(s) by 3171	\$ 4.00
03/11/03	Copy; 3 Page(s) by 3171	\$ 0.45
03/11/03	Postage by 4776	\$ 0.37
03/27/03	Facsimile; 12122632246, 15 Page(s) by 3171	\$ 15.00
04/11/03	Copy; 2 Page(s) by 3171	\$ 0.30
Total Expenses:		\$ 25.47

RS003106

05/21/03 WED 15:20 FAX 2124809028

001

\*\*\*\*\*  
\*\*\* TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO	0948	
DEPT. ACCESS CODE	1013	
CONNECTION TEL		12122632246
SUBADDRESS		
CONNECTION ID		
ST. TIME	05/21 15:19	
USAGE T	01'20	
PGS.	5	
RESULT	OK	

RS003107



GREENBERG  
ATTORNEYS AT LAW  
TRAUBIG

Todd S. Sharinn  
212-801-2157  
sharinn@gtlaw.com

April 9, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

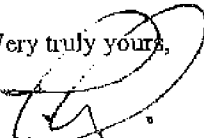
Re: Quickie, LLC  
Passive Knotless Suture System Patent (6,066,160)  
Our Ref. 51822.010700

Dear Alan:

Enclosed please find our invoice no. 1022157 for a total amount of \$739.60 for legal services and expenses rendered through and including March 31, 2003.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Todd S. Sharinn

TSS:zi  
Enclosures

GREENBERG TRAUBIG, LLP  
305 THIRD AVENUE  
NEW YORK, NEW YORK 10022-4834  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS003097

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Invoice No.: 1022157  
File No.: 51822.010700  
Bill Date: April 7, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Alan L. Fell, Esq.

**INVOICE**

Re: Passive Knotless Suture System Patent (6,066,160)

Legal Services through March 31, 2003:

Total Fees: \$ 735.00

Expenses:

Facsimile Charges 4.00  
Photocopy Charges 0.60

Total Expenses: \$ 4.60

Current Invoice: \$ 739.60

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS003098

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No. : 1022157  
File No. : 51822.010700

**WIRING INSTRUCTIONS FOR GT FIRM ACCOUNT  
FOR FEES & COSTS ARE AS FOLLOWS:**

TO: CITIBANK, F.S.B.  
ABA #: 266086554  
CREDIT TO: GREENBERG TRAUIG ACCOUNT  
ACCOUNT #: 3200175071

**PLEASE**  
**REFERENCE:** CLIENT NAME: QUICKIE, LLC  
FILE NUMBER: 51822.010700  
INVOICE NUMBER: 1022157  
ATTORNEY NAME: Paul J. Sutton

PS:YA  
Tax ID: 13-3613083

GREENBERG TRAUIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW  
JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON  
ZURICH

RS003099

Invoice No.: 1022157  
Re: Passive Knotless Suture System Patent (6,066,160)  
Matter No.: 51822.010700

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
03/18/03	Todd S. Sharinn	Review PTO reexamination statement and file (.9); review prior art cited (.6); telephone call with examiner (.2).	1.70	595.00
03/19/03	Todd S. Sharinn	Telephone interview with Examiner (.4).	0.40	140.00
Total Time:			2.10	
Total Fees:				\$ 735.00

RS003100

Invoice No.: 1022157  
Re: Passive Knotless Suture System Patent (6,066,160)  
Matter No.: 51822.010700

Page 2

Description of Expenses Billed:

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
10/22/02	Copy; 4 Page(s) by 2157	\$ 0.60
12/16/02	Facsimile; 17033051013, 4 Page(s) by 7431	\$ 4.00
Total Expenses:		\$ 4.60

RS003101

**GREENBERG**  
ATTORNEYS AT LAW  
**TARURIG**

Invoice No. : 986683  
File No. : 51822.010800  
Bill Date : January 14, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Alan L. Fell, Esq.

**INVOICE**

Re: Surgical Drape Patent Application

Legal Services through December 31, 2002:

Total Fees: \$ 7,314.00

Expenses:

Facsimile Charges 14.00  
Photocopy Charges 0.30

Total Expenses: \$ 14.30

Current Invoice: \$ 7,328.30

1028	
QUICKIE, LLC	
PAY TO THE ORDER OF: <u>Greenberg Tarurig, LLP</u> <u>Thirty seven hundred fifty &amp; no/100</u> THE BANK OF NEW YORK One Wall Street New York, NY 10038 FOR: <u>Invoice # 986683 partial Request</u>	DATE: <u>8/21/03</u> \$ <u>3750.00</u> DOLLARS 1-1-210 1028 1100102811:0210000181:11630222655311

885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-901-2100 FAX 212-688-2449 www.gtlaw.com

MIAMI NEW YORK WASHINGTON, D.C. LOS ANGELES CHICAGO BOSTON PHOENIX DENVER ATLANTA TYSONS CORNER  
PHILADELPHIA WILMINGTON ORLANDO TALLAHASSEE WEST PALM BEACH BOCA RATON PORT LAUDERDALE SAO PAULO

RS002686

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Todd S. Sharinn  
212-801-2157  
sharinn@gflaw.com

February 12, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

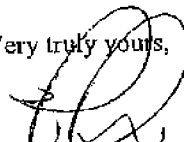
Re: Quickie, LLC  
Surgical Drape Patent Application  
Our Ref. 51822.010800

Dear Alan:

Enclosed please find our invoice no. 999540 for a total amount of \$7,729.20 for legal services and expenses rendered through and including January 31, 2002.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Todd S. Sharinn

TSS:ai  
Enclosures

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE  
NEW YORK, NEW YORK 10022-4834  
212-801-2100 FAX 212-688-2449 www.gflaw.com  
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS002687

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Invoice No.: 999540  
File No.: 51822.010800

**Account Statement**

<u>Date</u>	<u>Invoice #</u>	<u>Fees Due</u>	<u>Expenses Due</u>	<u>Other Due</u>	<u>Total Due</u>
01/14/03	986683	7,314.00	14.30	0.00	7,328.30
	Totals:	\$ 7,314.00	\$ 14.30	\$ 0.00	\$ 7,328.30

TOS:AM  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 [www.gtlaw.com](http://www.gtlaw.com)  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON ZURICH

RS002688



Invoice No.: 999540  
Re: Surgical Drape Patent Application  
Matter No.: 51822.010800

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
01/09/03	Todd S. Sharinn	Review and revise application (1.0).	1.00	350.00
			<u>Total Time:</u>	
			1.00	
			<u>Total Fees:</u>	\$ 350.00

RS002689

Invoice No.: 999540  
Re: Surgical Drape Patent Application  
Matter No.: 51822.010800

Page 2

Description of Expenses Billed:

DATE	DESCRIPTION	AMOUNT
01/09/03	Special Clerical Services, 12-15-02, Ivan, Adrienne	\$ 50.00
01/15/03	Copy, 6 Page(s) by 3171	\$ 0.90
Total Expenses:		\$ 50.90

RS002690

02/18/03 WED 11:40 FAX 2124809028

001

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\*\*\* TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO	0372	
DEPT. ACCESS CODE	1234	
CONNECTION TEL		2632246
SUBADDRESS		
CONNECTION ID		
ST. TIME	02/18 11:37	
USAGE T	03'11	
PGS.	11	
RESULT	OK	

RS002691

GREENBERG  
ATTORNEYS AT LAW  
TRAUBIG

Todd S. Sharinn  
212-801-2157  
sharinn@gtlaw.com

January 15, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

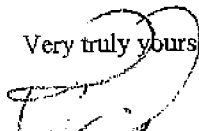
Re: Quickie, LLC  
Surgical Drape Patent Application  
Our Ref. 51822.010800

Dear Alan:

Enclosed please find our invoice no. 986683 for a total amount of \$7,328.30 for legal services and expenses rendered through and including December 31, 2002.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Todd S. Sharinn

TSS:ai  
Enclosures

GREENBERG TRAUBIG, LLP  
885 THIRD AVENUE  
NEW YORK, NEW YORK 10022-4884  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS002692

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Invoice No.: 986683  
File No.: 51822.010800  
Bill Date: January 14, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Alan L. Fell, Esq.

**INVOICE**

Re: Surgical Drape Patent Application

Legal Services through December 31, 2002:

Total Fees: \$ 7,314.00

Expenses:

Facsimile Charges 14.00  
Photocopy Charges 0.30

Total Expenses: \$ 14.30

Current Invoice: \$ 7,328.30

TOS:AM  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
MIAMI NEW YORK WASHINGTON, D.C. LOS ANGELES CHICAGO BOSTON PHOENIX DENVER ATLANTA TYSONS CORNER  
PHILADELPHIA WILMINGTON ORLANDO TALLAHASSEE WEST PALM BEACH BOCA RATON FORT LAUDERDALE SAO PAULO

RS002693

Invoice No.: 986683  
 Re: Surgical Drape Patent Application  
 Matter No.: 51822,010800

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
10/22/02	Jennifer H. Burdman	Research regarding surgical incise drapes patents.	3.00	600.00
10/23/02	Jennifer H. Burdman	Draft patent application for surgical incise drape.	4.50	900.00
10/25/02	Jennifer H. Burdman	Draft patent application for surgical incise drape.	1.50	300.00
10/28/02	Jennifer H. Burdman	Draft patent application for surgical incise drape.	1.00	200.00
10/29/02	Jennifer H. Burdman	Draft patent application for surgical incise drape.	2.00	400.00
10/30/02	Jennifer H. Burdman	Draft patent application for surgical incise drape.	4.50	900.00
11/19/02	Jennifer H. Burdman	Draft patent application.	3.00	600.00
11/19/02	Todd S. Sharinn	Review and revise patent application (2.5).	2.50	787.50
11/20/02	Jennifer H. Burdman	Draft patent application; conference with T. Sharinn regarding draft application.	3.00	600.00
11/20/02	Todd S. Sharinn	Review and revise patent application (2.6).	2.60	819.00
12/04/02	Todd S. Sharinn	Revise patent application (1.1).	1.10	346.50
12/06/02	Jennifer H. Burdman	Research regarding the addition of particle granulars to provide non-slip surface; draft additional embodiment for patent application.	2.10	420.00
12/20/02	Todd S. Sharinn	Review and revise application (1.4).	1.40	441.00
<u>Total Time:</u>			32.20	
<u>Total Fees:</u>				\$ 7,314.00

RS002694

Invoice No.: 986683  
Re: Surgical Drapes Patent Application  
Matter No.: 51822.010800

Page 2

Description of Expenses Billed:

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
11/20/02	Facsimile, 12124220158, 14 Page(s) by 3171	\$ 14.00
11/20/02	Copy, 2 Page(s) by 3171	\$ 0.30
Total Expenses:		\$ 14.30

RS002695

Invoice No.: 978380  
 Re: New Surgical Drape Patent License  
 Matter No.: 51822.010800

Page 1

Description of Professional Services Rendered:

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
10/22/02	Jennifer H. Burdman	Research regarding surgical incise drapes patents.	3.00	600.00
10/23/02	Jennifer H. Burdman	Draft patent application for surgical incise drape.	4.50	900.00
10/25/02	Jennifer H. Burdman	Draft patent application for surgical incise drape.	1.50	300.00
10/28/02	Jennifer H. Burdman	Draft patent application for surgical incise drape.	1.00	200.00
10/29/02	Jennifer H. Burdman	Draft patent application for surgical incise drape.	2.00	400.00
10/30/02	Jennifer H. Burdman	Draft patent application for surgical incise drape.	4.50	900.00
11/19/02	Jennifer H. Burdman	Draft patent application.	3.00	600.00
11/19/02	Todd S. Sharinn	Review and revise patent application (2.5).	2.50	787.50
11/20/02	Jennifer H. Burdman	Draft patent application; conference with T. Sharinn regarding draft application.	3.00	600.00
11/20/02	Todd S. Sharinn	Review and revise patent application (2.6).	2.60	819.00
<b>Total Time:</b>			27.60	
<b>Total Fees:</b>				\$ 6,106.50

RS002696



Invoice No.: 978380  
Re: New Surgical Drape Patent License  
Matter No.: 51822.010800

Page 2

Description of Expenses Billed:

DATE	DESCRIPTION	AMOUNT
11/20/02	Facsimile; 12124220158, 14 Page(s) by 3171	\$ 14.00
11/20/02	Copy; 2 Page(s) by 3171	\$ 0.30
Total Expenses:		<hr/> \$ 14.30

RS002697

**GREENBERG**  
ATTORNEYS AT LAW  
**TRAURIG**

Invoice No. : 999540  
File No. : 51822.010800  
Bill Date : February 12, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Alan L. Fell, Esq.

**INVOICE**

Re: Surgical Drape Patent Application

Legal Services through January 31, 2003:

Total Fees: \$ 350.00

Expenses:

Photocopy Charges 0.90  
Special Clerical Services 50.00

Total Expenses: \$ 50.90

Current Invoice: \$ 400.90

Previous Balance (see attached statement): \$ 7,328.30

Total Amount Due: \$ 7,729.20

TOS:AM  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-601-2100 FAX 212-688-2449 www.gtlaw.com  
AMSTERDAM ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK NEW JERSEY  
ORLANDO PHILADELPHIA PHOENIX TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON ZURICH

RS002698

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Todd S. Sharinn  
212-801-2157  
sharinn@gtlaw.com

January 15, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

Re: Quickie, LLC  
Reexamination of U.S. Patent No. 6,066,160 by Medtronic  
Our Ref. 51822.010900

Dear Alan:

Enclosed please find our invoice no. 986682 for a total amount of \$1,561.51 for legal services and expenses rendered through and including December 31, 2002.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

  
Todd S. Sharinn

TSS:ai  
Enclosures

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE  
NEW YORK, NEW YORK 10022-4834  
212-801-2100 FAX 212-688-2449 www.gtlaw.com  
NEW YORK ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON

RS003092

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Invoice No. : 986682  
File No. : 51822.010900  
Bill Date : January 14, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Alan L. Fell, Esq.

**INVOICE**

Re: Reexamination of U.S. Patent No. 6,066,160 by Medtronic

Legal Services through December 31, 2002:

Total Fees: \$ 1,543.50

Expenses:

Facsimile Charges	8.00
Federal Express Charges	8.81
Photocopy Charges	1.20

Total Expenses: \$ 18.01

Current Invoice: \$ 1,561.51

TOS:AM  
Tax ID: 13-3613083

GREENBERG TRAURIG, LLP  
885 THIRD AVENUE NEW YORK, NEW YORK 10022  
212-801-2100 FAX 212-688-2449 [www.gtlaw.com](http://www.gtlaw.com)  
MIAMI NEW YORK WASHINGTON, D.C. LOS ANGELES CHICAGO BOSTON PHOENIX DENVER ATLANTA TYSONS CORNER  
PHILADELPHIA WILMINGTON ORLANDO TALLAHASSEE WEST PALM BEACH BOCA RATON FORT LAUDERDALE SAO PAULO

RS003093

Invoice No.: 986682  
 Re: Reexamination of U.S. Patent No. 6,066,160 by Medtronic  
 Matter No.: 51822.010900

Page 1

Description of Professional Services Rendered:

<u>DATE</u>	<u>TIMEKEEPER</u>	<u>DESCRIPTION</u>	<u>HOURS</u>	<u>AMOUNT</u>
12/03/02	Todd S. Sharinn	Telephone call with S. Colvin (.2); review papers filed by Medtronic (1.8); legal research regarding options available (.8).	2.80	882.00
12/06/02	Todd S. Sharinn	Telephone call from M. Evens (.3).	0.30	94.50
12/09/02	Todd S. Sharinn	Confer with A. Fell regarding status and strategy (.3).	0.30	94.50
12/10/02	Todd S. Sharinn	Confer with M. Evens regarding status and strategy (.3); review and revise affirmation of T. Sharinn (.6).	0.90	283.50
12/12/02	Todd S. Sharinn	Exchange emails with M. Evens and revise declaration (.3).	0.30	94.50
12/13/02	Todd S. Sharinn	Finalize and forward declaration (.3).	0.30	94.50
<u>Total Time:</u>			4.90	
<u>Total Fees:</u>				\$ 1,543.50

RS003094

Invoice No.: 986682  
 Re: Reexamination of U.S. Patent No. 6,066,160 by Medtronic  
 Matter No.: 51822.010900

Page 2

Description of Expenses Billed:

DATE	DESCRIPTION	AMOUNT
10/15/02	VENDOR: FedEx INVOICE#: 912576955 DATE: 10/28/2002 Tracking #411538302143; From: TODD SHARINN, GREENBERG TRAURIG LLP, 885 3RD AVE FL 21, NEW YORK, NY 100224898, To: MARK F. EVENS,ESQ, THELEN REID & PRIEST LLP, 701 PENNSYLVANIA AVENUE, N.W., WASHINGTON, DC 200040000	\$ 8.81
12/13/02	Facsimile; 4220158, 4 Page(s) by 3171	\$ 4.00
12/13/02	Facsimile; 2632246, 4 Page(s) by 3171	\$ 4.00
12/13/02	Copy; 5 Page(s) by 3171	\$ 0.75
12/13/02	Copy; 2 Page(s) by 3171	\$ 0.30
12/13/02	Copy; 1 Page(s) by 3171	\$ 0.15
Total Expenses:		\$ 18.01

RS003095

Todd S. Sharim  
212-801-2157  
sharimt@gllaw.com

April 9, 2003

Quickie Vision, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

Re: Quickie LLC v. Medtronic  
Our Ref. 51822.010400

Dear Alan:

Enclosed please find our summary of outstanding invoice nos. 921521, 930770, 942637, and 961002 for a total amount of \$47,261.59 for legal services and expenses rendered through and including March 31, 2003.

If you have any questions, please do not hesitate to ~~contact me~~.

Very truly yours,



Todd S. Sharim

TSS:ai  
Enclosures

GREENBERG TRAURIG, LLP

RS003108

# GREENBERG TRAURIG

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, NY 10004

Attn: Alan L. Fell, Esq.

Outstanding invoices as of April 07, 2003

File Number	Titled	Invoice #	Dated	Billed thru	Invoice Balance Due
51822.010400	Quickie LLC v. Medtronics				
		921521	08/12/02	07/31/02	4,975.52
		930770	09/09/02	09/04/02	39,108.68
		942637	10/04/02	09/30/02	2,603.72
		961002	11/11/02	10/31/02	573.57
					<hr/>
			Balance due this file	\$	47,261.59
					<hr/>
			Total client balance	\$	47,261.59
					<hr/>

PXS:YA

Page 1

GREENBERG TRAURIG, LLP  
MET LIFE BUILDING  
200 PARK AVENUE, NEW YORK, NEW YORK 10166  
212-801-9200 FAX 212-801-6400 www.gtlaw.com  
MIAMI NEW YORK WASHINGTON, D.C. ATLANTA PHILADELPHIA TYSONS CORNER SAO PAULO  
FORT LAUDERDALE WEST PALM BEACH ORLANDO TALLAHASSEE BOCA RATON CHICAGO

RS003109



# Greenberg Traurig

Todd S. Sharinn  
212.601.2157

September 23, 2004

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004

Attn: Rick Steiner

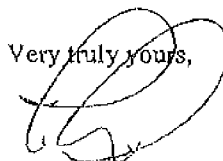
Re: Outstanding Statement  
Client Number: 51822

Dear Rick:

Enclosed please find our outstanding statement of invoices as of October 7, 2004.  
Thank you in advance for your assistance in processing these payments.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Todd S. Sharinn

Enclosure

ALBANY  
AMSTERDAM  
ATLANTA  
BOCA RATON  
BOSTON  
CHICAGO  
DALLAS  
DENVER  
FORT LAUDERDALE  
LOS ANGELES  
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Wyz2-B51752461v01

Greenberg Traurig, LLP | Attorneys at Law | 885 Third Avenue | New York, NY 10022-4834 | Tel 212.601.2100 | Fax 212.658.2449

www.gtlaw.com

RS003187

# Greenberg Traurig

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, NY 10004

Attn: Rick Steiner

Outstanding invoices as of October 07, 2004

File Number	Titled	Invoice #	Dated	Billed thru	Invoice Balance Due
51822.010000	General				
		*999539	02/12/03	01/31/03	365.68
		*1022875	04/08/03	03/31/03	70.00
			Balance due this file	\$	435.68
51822.010200	Concentric Passive Knotless Suture Terminator				
		*1129334	11/14/03	10/31/03	1,602.09
		*1157465	01/20/04	12/31/03	316.64
		1217480	05/14/04	04/30/04	835.05
			Balance due this file	\$	2,753.78
51822.010400	Quickie LLC v. Medtronics				
		*930770	09/09/02	09/04/02	29,358.99
		*942637	10/04/02	09/30/02	2,603.72
		*961002	11/11/02	10/31/02	573.67
		*1042103	05/13/03	04/30/03	25.47
			Balance due this file	\$	32,561.85
51822.010800	Surgical Drape Patent Application				
		*986683	01/14/03	12/31/02	3,578.30

Page 1

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FORT LAUDERDALE WEST PALM BEACH ORLANDO TALLAHASSEE BOCA RATON CHICAGO

RS003188

# Greenberg Taurig

		*999540	02/12/03	01/31/03	400.90
				Balance due this file	\$ 3,979.20
51822.010900	Reexamination of U.S. Patent No. 6,066,160 by Medtronic				
		*986682	01/14/03	12/31/02	1,561.51
				Balance due this file	\$ 1,561.51
				Total client balance	\$ 41,292.02

FIL:AM

Page 2

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200 PARK AVENUE, NEW YORK, NEW YORK 10166  
212-801-9200 FAX 212-801-6400 www.gtaw.com  
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FORT LAUDERDALE WEST PALM BEACH ORLANDO TALLAHASSEE BOCA RATON CHICAGO

RS003189

# Greenberg Traurig

Todd S. Sharinn  
212-801-2157  
sharinn@gtlaw.com

November 16, 2004

Mr. Alan Fell  
S&A Rings LLC  
c/o Rick, Steiner, Segal & Fell  
3 New York Plaza  
New York, New York 10004

Re: Outstanding Invoices for Legal Services

Dear Alan:

Enclosed please find our outstanding statement of invoices as of November 15, 2004. Thank you in advance for your assistance in processing these payments.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

Todd S. Sharinn

TSS/cak  
Enclosures

ALBANY  
AMSTERDAM  
ATLANTA  
BOCA RATON  
BOSTON  
CHICAGO  
DALLAS  
DENVER  
FORT LAUDERDALE  
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ZURICH  
www.gtlaw.com

# Greenberg Traurig

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, NY 10004

Attn: Rick Steiner

Outstanding invoices as of November 15, 2004

File Number	Titled	Invoice #	Dated	Billed thru	Invoice Balance Due
51822.010000	General				
		*999539	02/12/03	01/31/03	365.68
		*1022875	04/08/03	03/31/03	70.00
				Balance due this file	\$ 435.68
51822.010200	Concentric Passive Knotless Suture Terminator				
		*1129334	11/14/03	10/31/03	1,602.09
		*1157465	01/20/04	12/31/03	316.64
		1217480	05/14/04	04/30/04	835.05
				Balance due this file	\$ 2,753.78
51822.010400	Quickie LLC v. Medtronics				
		*930770	09/09/02	09/04/02	29,358.99
		*942637	10/04/02	09/30/02	2,603.72
		*961002	11/11/02	10/31/02	573.67
		*1042103	05/13/03	04/30/03	25.47
				Balance due this file	\$ 32,561.85
51822.010800	Surgical Drape Patent Application				
		*986683	01/14/03	12/31/02	3,578.30

Page 1

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212 801 9300 FAX 212 801-6400 www.gtlaw.com  
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FORT LAUDERDALE WEST PALM BEACH ORLANDO TALLAHASSEE BOCA RATON CHICAGO

RS003199

# Greenberg Traurig

	*999540	02/12/03	01/31/03	400.90
				<hr/>
		Balance due this file	\$	3,979.20
51822.010900	Reexamination of U.S. Patent No. 6,066,160 by Medtronic			
	*986682	01/14/03	12/31/02	1,561.51
				<hr/>
		Balance due this file	\$	1,561.51
				<hr/>
		Total client balance	\$	41,292.02
				<hr/>

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Page 2

GREENBERG TRAURIG, LLP  
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200 PARK AVENUE, NEW YORK, NEW YORK 10066  
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RS003200

# **EXHIBIT O**

Message

Page 1 of 2

**Mark F. Evens**

---

**From:** Sandra Ortiz [ortizs02@med.nyu.edu]  
**Sent:** Friday, September 01, 2006 4:02 PM  
**To:** Mark F. Evens  
**Subject:** patent

--

New York University School of Medicine  
Department of Cardiothoracic Surgery  
Sandra Ortiz Perez  
Phone (212) 263-6273  
Fax (212) 263-6546

-----Original Message-----

**From:** Girard, Michael [mailto:MGirard@sjm.com]  
**Sent:** Sunday, July 23, 2006 1:22 PM  
**To:** colvin@cv.med.nyu.edu  
**Cc:** Fazio, George J  
**Subject:** Questions

Dr. Colvin,

I hope you had a great vacation last week. As we discussed on Friday, there are a number of questions that have come up as I have been working with our Corporate IP and Business Development people to prepare a proposed structure for a collaboration Agreement. To follow-up from our conversation on Friday here is a list of the specific questions:

1. Are US patent #'s 6,066,160 and 6,716,243 the only knotless suture patents that exist or are there other applications pending? If so, can we have access to any pending applications?
2. There are two different companies listed on the two patents, Quickie, LLC and Quickie, Inc. Are there two companies or one?
3. What IP (other MIS related IP) is owned by Quickie?
4. Based on the re-examination of the '160 patent the claims have been modified and will be reissued, can we get a copy of the new claims since they have not yet been published?
5. It appears that the maintenance fees for the '160 patent have not been paid and the patent has lapsed. Is this correct?
6. Who are all of the affiliates of Quickie that would be part of the collaboration with St. Jude (Drs. Colvin, Galloway, Grossi, Mr. Katz, others)?
7. If there is new joint IP generated during our collaboration will NYU have any rights or will it be entirely owned by Quickie?
8. Who is Paul Oddo and what is his relationship with Quickie and its affiliates?
9. Is VTS Inc. or NYU associated with Quickie in any way?
10. What is the history of Quickie, LLC and Quickie, Inc.?
11. Can we get a quick summary of the history of the relevant patents held by Quickie and its affiliates? In particular, please describe any attempts to invalidate the patents and changes in

9/1/2006

QLLC 0097258



Message

Page 2 of 2

ownerships rights of the patents.

12. Does NYU or Medtronic have any rights to any of the IP held by Quickie and/or its affiliates relating to knot-free suture technology or minimally invasive approaches?
13. Can we get a summary of the history of the Medtronic relationship with Quickie and can we get a copy or verbal overview of the Medtronic Agreement?
14. Are there any royalty payments owed to or by Quickie and its affiliates relating to the relevant patents or any rights to future potential royalty payments relating to the IP?
15. When do the patents expire?
16. Is Quickie's IP counsel Allan Fell (sp?) at 212-422-0488?
17. Does he also serve as the general counsel? If not, who is Quickie's their corporate counsel?
18. Is Estech involved with Quickie, or other entities?

Please take a look at the above questions and let me know who I should contact to discuss. Thanks for your help.

Best Regards,

Mike

Michael J. Girard, P.E.  
Sr. Director, Research & Development

St. Jude Medical, Inc.  
Cardiac Surgery Division  
177 County Road B East  
St. Paul, MN 55117  
Ph. (651) 486-4003  
Fax. (651) 486-4085  
Email: [mgirard@sjm.com](mailto:mgirard@sjm.com)

9/1/2006

QLLC 0097259

# **EXHIBIT P**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
QUICKIE, LLC,

Plaintiff,

vs.

07-CV-10331

GREENBERG TRAURIG, LLC, (RMB) (DFE)

et al.,

Defendants.  
-----

DEPOSITION OF AUBREY GALLOWAY

Thursday, June 12, 2008

9:30 a.m.

Reported by:

Joan Urzia, RPR

JOB NO. 203729

2 (Pages 2 to 5)

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 June 12, 2008</p> <p>3 9:30 a.m.</p> <p>4 New York, New York</p> <p>5</p> <p>6</p> <p>7 DEPOSITION of AUBREY GALLOWAY,</p> <p>8 held at the offices of Pollack &amp; Kaminsky,</p> <p>9 114 West 47th Street, New York, New York,</p> <p>10 pursuant to Notice, before Joan Urzia, a</p> <p>11 Notary Public of the State of New York.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 IT IS HEREBY STIPULATED AND</p> <p>3 AGREED, by and between the attorneys</p> <p>4 for the respective parties herein, that</p> <p>5 filing and sealing be and the same are</p> <p>6 hereby waived.</p> <p>7 IT IS FURTHER STIPULATED AND</p> <p>8 AGREED that all objections, except as</p> <p>9 to the form of the question, shall be</p> <p>10 reserved to the time of the trial.</p> <p>11 IT IS FURTHER STIPULATED AND</p> <p>12 AGREED that the within deposition may</p> <p>13 be sworn to and signed before any</p> <p>14 officer authorized to administer an</p> <p>15 oath, with the same force and effect as</p> <p>16 if signed and sworn to before the</p> <p>17 Court.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4</p> <p>5 DIAMOND MCCARTHY, LLP</p> <p>6 Attorneys for Plaintiff</p> <p>7 620 Eighth Avenue</p> <p>8 39th Floor</p> <p>9 New York, New York 10018</p> <p>10 BY: STEPHEN T. LODEN, ESQ.</p> <p>11 ALLAN DIAMOND, ESQ.</p> <p>12</p> <p>13</p> <p>14 POLLACK &amp; KAMINSKY</p> <p>15 Attorneys for Defendant</p> <p>16 114 West 47th Street</p> <p>17 New York, New York 10036</p> <p>18 BY: MARTIN I. KAMINSKY, ESQ.</p> <p>19 JUSTIN Y.K. CHU, ESQ.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 A. Galloway</p> <p>2 AUBREY GALLOWAY,</p> <p>3 called as a witness, having been duly</p> <p>4 sworn by a Notary Public, was examined</p> <p>5 and testified as follows:</p> <p>6 EXAMINATION BY</p> <p>7 MR. KAMINSKY:</p> <p>8 <b>Q. Can you state your full name for</b></p> <p>9 <b>the record, please.</b></p> <p>10 A. My name is Aubrey Galloway.</p> <p>11 <b>Q. Would you state your residence</b></p> <p>12 <b>address for the record.</b></p> <p>13 A. 17 Sunset Avenue, Bronxville, New</p> <p>14 York 10708.</p> <p>15 <b>Q. Do you have a business address?</b></p> <p>16 A. Yes, my business address is 530</p> <p>17 First Avenue, suite 9V, New York, New York.</p> <p>18 <b>Q. Are you employed by anyone?</b></p> <p>19 A. I'm currently employed by NYU</p> <p>20 School of Medicine.</p> <p>21 <b>Q. What is your position there?</b></p> <p>22 A. I'm a professor and chairman of</p> <p>23 cardiothoracic surgery at NYU School of</p> <p>24 Medicine.</p> <p>25 <b>Q. Do you have any other business</b></p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 6</p> <p>1 A. Galloway</p> <p>2 affiliations?</p> <p>3 A. I have -- yes, I have private</p> <p>4 business affiliations.</p> <p>5 <b>Q. What are they?</b></p> <p>6 A. I have, I'm a member of several</p> <p>7 limited liability corporations. Those</p> <p>8 would include an entity called S&amp;A Rings,</p> <p>9 LLC, Quickie, LLC, E-surge, LLC and A.</p> <p>10 Galloway Realty, LLC.</p> <p>11 <b>Q. Is there any common ownership in</b></p> <p>12 <b>any of these entities, in other words,</b></p> <p>13 <b>among various different persons?</b></p> <p>14 A. There is some common ownership</p> <p>15 between some of the members of S&amp;A Rings,</p> <p>16 Quickie and E-surge.</p> <p>17 <b>Q. Can you explain in a little more</b></p> <p>18 <b>detail what the common ownership is?</b></p> <p>19 A. In terms of the people?</p> <p>20 <b>Q. Yes. Are they the same people,</b></p> <p>21 <b>same entities that are vested in them, et</b></p> <p>22 <b>cetera?</b></p> <p>23 A. Some of the people are the same</p> <p>24 and some of the people are different. Each</p> <p>25 entity was formed for very specific</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Galloway</p> <p>2 technology for less invasive surgery.</p> <p>3 The other real estate entity has</p> <p>4 none of the common --</p> <p>5 <b>Q. That's a personal entity of your</b></p> <p>6 <b>own?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Do you also have a professional</b></p> <p>9 <b>corporation of your own?</b></p> <p>10 A. Yes, I have a professional</p> <p>11 corporation, Aubrey Galloway, MD, PC, which</p> <p>12 handles my consulting, I do certain</p> <p>13 consulting services for medical device</p> <p>14 companies and that handles that consulting,</p> <p>15 those consulting services or consulting</p> <p>16 agreements are some of which are done</p> <p>17 through that entity.</p> <p>18 <b>Q. Was Dr. Colvin involved with that</b></p> <p>19 <b>entity?</b></p> <p>20 A. No.</p> <p>21 <b>Q. Dr. Grassi?</b></p> <p>22 A. No.</p> <p>23 <b>Q. Mr. Katz?</b></p> <p>24 A. No.</p> <p>25 <b>Q. What is your Social Security</b></p>
<p style="text-align: right;">Page 7</p> <p>1 A. Galloway</p> <p>2 business development purpose, and the</p> <p>3 entity of S&amp;A Rings, for example, was</p> <p>4 formed between myself and Dr. Stephen</p> <p>5 Colvin and Dr. Eugene Grassi and Alan Katz</p> <p>6 to develop a very specific valve repair</p> <p>7 products or ring angioplasties.</p> <p>8 Dr. Colvin and Dr. Grassi and</p> <p>9 Alan Katz are colleagues of mine.</p> <p>10 Dr. Colvin and Dr. Grassi are surgeons.</p> <p>11 Dr. Alan Katz is an engineer.</p> <p>12 In terms of Quickie, those</p> <p>13 parties are also members of Quickie, LLC</p> <p>14 which was established to handle our</p> <p>15 intellectual property and development of</p> <p>16 certain groups of devices related to less</p> <p>17 invasive attachment devices, facilitating</p> <p>18 devices for less invasive surgery and</p> <p>19 related matters to that specific entity.</p> <p>20 Similarly, E-surge, LLC has those</p> <p>21 three common members in addition to other</p> <p>22 people which is a different set of ideas</p> <p>23 related to not those other two groups that</p> <p>24 I just discussed, but a different set of</p> <p>25 ideas related to, if you will, profusion</p>	<p style="text-align: right;">Page 9</p> <p>1 A. Galloway</p> <p>2 number?</p> <p>3 A. 432-98-8550.</p> <p>4 <b>Q. Now can you tell us --</b></p> <p>5 MR. DIAMOND: I'm sorry to</p> <p>6 interrupt, I'm not sure why you needed</p> <p>7 that, but for the record, that needs</p> <p>8 to be highly confidential and</p> <p>9 obviously under protective order. I</p> <p>10 don't want someone's Social Security</p> <p>11 number floating around in some</p> <p>12 deposition transcript.</p> <p>13 BY MR. KAMINSKY:</p> <p>14 <b>Q. Did any of the three entities</b></p> <p>15 <b>that were involved in making medical</b></p> <p>16 <b>devices or designing medical devices obtain</b></p> <p>17 <b>patents? The three entities I mean are S&amp;A</b></p> <p>18 <b>Rings, E-surge and Quickie.</b></p> <p>19 A. Yes, they did.</p> <p>20 <b>Q. Which ones?</b></p> <p>21 A. Well, Quickie obtained two</p> <p>22 patents. I don't know the complete patent</p> <p>23 numbers. I refer to one as the '160</p> <p>24 Patent. I think the other is the '243</p> <p>25 Patent, which was a concentric ring,</p>

4 (Pages 10 to 13)

<p style="text-align: right;">Page 10</p> <p>1 A. Galloway</p> <p>2 concentric ring auto suture terminator</p> <p>3 patent. And certain others were pursued</p> <p>4 within Quickie but ultimately not obtained.</p> <p>5 The ring angioplasty field, that</p> <p>6 field was handled by S&amp;A Rings, which is</p> <p>7 completely a separate thing. And there was</p> <p>8 one patent obtained by S&amp;A Rings. I don't</p> <p>9 recall, there's two other devices spun off</p> <p>10 from that via that business relationship,</p> <p>11 but I think that those patents were</p> <p>12 subsequently actually owned by the company</p> <p>13 that we were under license and development.</p> <p>14 E-surge, I don't believe, has any</p> <p>15 independent patents.</p> <p>16 <b>Q. What is the patent that S&amp;A Rings</b></p> <p>17 <b>obtained?</b></p> <p>18 A. I don't know the patent number.</p> <p>19 It was for an angioplasty valve repair</p> <p>20 device.</p> <p>21 <b>Q. When is the first time that any</b></p> <p>22 <b>of the entities that you were associated</b></p> <p>23 <b>with obtained a patent?</b></p> <p>24 A. I don't have the exact timetable</p> <p>25 I guess in my mind in terms of specific</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Galloway</p> <p>2 <b>Q. Now the first patent you got was</b></p> <p>3 <b>through S&amp;A Rings, is that what you're</b></p> <p>4 <b>saying for the --</b></p> <p>5 A. Correct.</p> <p>6 <b>Q. -- for the angioplasty?</b></p> <p>7 A. Right, right.</p> <p>8 <b>Q. Who was your counsel in obtaining</b></p> <p>9 <b>that patent?</b></p> <p>10 A. Again, to my recollection it was,</p> <p>11 Todd Sharinn was the individual, and I</p> <p>12 think it was at that time through Pepe &amp;</p> <p>13 Hazard, which was I believe his firm.</p> <p>14 <b>Q. That patent is still in existence</b></p> <p>15 <b>today?</b></p> <p>16 A. Correct.</p> <p>17 <b>Q. So you've paid maintenance fees</b></p> <p>18 <b>on that patent?</b></p> <p>19 A. Correct.</p> <p>20 <b>Q. The '160 Patent expired, is that</b></p> <p>21 <b>right, or was deemed abandoned, is that</b></p> <p>22 <b>right?</b></p> <p>23 A. Correct.</p> <p>24 <b>Q. The '243 Patent still exists</b></p> <p>25 <b>today?</b></p>
<p style="text-align: right;">Page 11</p> <p>1 A. Galloway</p> <p>2 years, but to my recollection, the thing</p> <p>3 that we did first was the development of</p> <p>4 our idea for an angioplasty device via S&amp;A</p> <p>5 Rings, and that patent, I believe, was</p> <p>6 issued, applied for first and issued first</p> <p>7 to my recollection, I don't remember the</p> <p>8 time.</p> <p>9 I think after that, within a year</p> <p>10 or so, we applied for and obtained what we</p> <p>11 refer to as the '160 Patent and that was, I</p> <p>12 don't know the legal terminology, it was</p> <p>13 not assigned to Quickie but it was patented</p> <p>14 to Quickie, assigned by the inventors to</p> <p>15 Quickie and patented to Quickie, around</p> <p>16 2000, sometime around then.</p> <p>17 Around 2004, the concentric ring</p> <p>18 '243 Patent was also granted and also under</p> <p>19 Quickie, assigned to Quickie by the</p> <p>20 inventors and the patented was granted to</p> <p>21 Quickie. I think that's roughly the</p> <p>22 timetable.</p> <p>23 <b>Q. The '160 Patent is for a passive</b></p> <p>24 <b>not suture terminator system?</b></p> <p>25 A. Roughly, yeah.</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Galloway</p> <p>2 A. Yes.</p> <p>3 <b>Q. And you've paid maintenance fees</b></p> <p>4 <b>on that?</b></p> <p>5 MR. DIAMOND: Objection. Who is</p> <p>6 "you"?</p> <p>7 MR. KAMINSKY: It's a fair</p> <p>8 question.</p> <p>9 BY MR. KAMINSKY:</p> <p>10 <b>Q. I mean the patent holders.</b></p> <p>11 A. As far as I know, yes.</p> <p>12 <b>Q. Which entity wrote the check for</b></p> <p>13 <b>patent fees for the S&amp;A Rings' maintenance</b></p> <p>14 <b>fees?</b></p> <p>15 A. I don't know the answer to that.</p> <p>16 <b>Q. Who handled paying the</b></p> <p>17 <b>maintenance fees, in other words who</b></p> <p>18 <b>actually did the physical paying of the</b></p> <p>19 <b>fees?</b></p> <p>20 A. Again, I don't know the answer to</p> <p>21 that exactly. My understanding of that is</p> <p>22 that we have a general counsel within S&amp;A</p> <p>23 Rings, Alan Fell who, we also then have our</p> <p>24 specialized counsel which for S&amp;A Rings, I</p> <p>25 believe, was initially Pepe &amp; Hazard and</p>

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<p style="text-align: right;">Page 14</p> <p>1 A. Galloway 2 then Greenberg. 3 I don't recall when the 4 maintenance fee came up. I believe that 5 that patent was assigned very quickly over 6 to Medtronic and my understanding and my 7 suspicion, but I can't specifically say -- 8 MR. DIAMOND: Don't guess. Tell 9 him what you know. 10 A. It was assigned to Medtronic. 11 It's my understanding that it may have been 12 Medtronic then that then assumed all 13 responsibilities for the patent once we 14 assigned the patent, but I don't know 15 specifically if that's true because I 16 haven't reviewed those records. 17 <b>Q. When you refer to that patent,</b> 18 <b>which patent are you referring to?</b> 19 A. The S&amp;A Rings patent. 20 <b>Q. Now, Alan Fell acted as the</b> 21 <b>general counsel for the entities that we'll</b> 22 <b>call the Colvin Galloway entities, if</b> 23 <b>that's okay with you -- is that, for</b> 24 <b>purposes of this deposition can we refer to</b> 25 <b>the three entities S&amp;A Rings, Quickie and</b></p>	<p style="text-align: right;">Page 16</p> <p>1 A. Galloway 2 counsel for the Colvin Galloway entities? 3 A. I believe he's been general 4 counsel since the beginning of each of the 5 entities. 6 <b>Q. And is that sometime in the mid</b> 7 <b>1990s?</b> 8 A. Yeah, sometime in the mid to late 9 1990s. 10 <b>Q. And so do I understand your</b> 11 <b>testimony correctly that you looked to</b> 12 <b>Mr. Fell to in effect oversee the</b> 13 <b>individual patent counsel and assure that</b> 14 <b>whatever had to be done as to the patents</b> 15 <b>was done?</b> 16 A. No, not exactly. I think we 17 looked to Mr. Fell as general counsel to 18 primarily do negotiations with various 19 businesses and to handle contracts related 20 to those businesses which we've negotiated 21 from our intellectual property for these 22 different devices or for intellectual 23 property for these devices. 24 So he's primarily served as a 25 contract attorney for us. He also would</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Galloway 2 E-surge as the Colvin Galloway entities? 3 A. If you want to refer to those 4 three entities as Colvin Galloway entities, 5 then each of those three entities, yes, 6 Alan Fell acted as general counsel for 7 those three. 8 <b>Q. Okay.</b> 9 <b>And I understand that they had</b> 10 <b>some separate other additional owners</b> 11 <b>besides Dr. Grassi, Dr. Colvin, Alan Katz</b> 12 <b>and you?</b> 13 A. Correct. 14 <b>Q. But for convenience today, we'll</b> 15 <b>call them the Colvin Galloway entities.</b> 16 A. Okay. 17 <b>Q. Alan Fell was a partner in a law</b> 18 <b>firm, is that right?</b> 19 A. Yes, he is. 20 <b>Q. And he still remains a partner?</b> 21 A. Yes. 22 <b>Q. And is that law firm the Rick</b> 23 <b>Steiner Law Firm?</b> 24 A. Yes, it is. 25 <b>Q. How long has he been general</b></p>	<p style="text-align: right;">Page 17</p> <p>1 A. Galloway 2 handle the taxes for the various entities. 3 In terms of handling the 4 intellectual property, we felt that was 5 outside of the scope of his expertise and 6 we contracted into outside firms to handle 7 intellectual property matters. 8 <b>Q. Who picked the outside counsel</b> 9 <b>that you would hire to do intellectual</b> 10 <b>property matters?</b> 11 A. That was generally a consensus 12 between myself, Dr. Colvin and Alan Fell, 13 but primarily consensus between myself and 14 Dr. Colvin who, Dr. Colvin being one of the 15 major partners in each of the entities and 16 me being one of the major partners and the 17 managing partners of the different 18 entities. 19 <b>Q. Who determined to hire Todd</b> 20 <b>Sharinn and his firm Pepe &amp; Hazard?</b> 21 MR. DIAMOND: In connection with 22 which -- 23 BY MR. KAMINSKY: 24 <b>Q. At any time.</b> 25 A. Again, my recollection it was a</p>

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<p style="text-align: right;">Page 18</p> <p>1 A. Galloway</p> <p>2 decision between Dr. Colvin and myself.</p> <p>3 <b>Q. Who recommended Mr. Sharinn or</b></p> <p>4 <b>Pepe &amp; Hazard?</b></p> <p>5 A. I don't recall that.</p> <p>6 <b>Q. Isn't it correct that Mr. Fell</b></p> <p>7 <b>was the one who recommended that firm?</b></p> <p>8 A. I don't know.</p> <p>9 <b>Q. Who oversaw the work of Pepe &amp;</b></p> <p>10 <b>Hazard and Mr. Sharinn when he was there?</b></p> <p>11 MR. DIAMOND: Objection to form.</p> <p>12 A. I don't understand what you mean,</p> <p>13 oversaw the work.</p> <p>14 <b>Q. Did anybody check the work of</b></p> <p>15 <b>that firm to determine that it was</b></p> <p>16 <b>satisfactory?</b></p> <p>17 A. I don't know if that's true. I</p> <p>18 think we hired the firm and they did work</p> <p>19 and we worked with the firm, but we didn't</p> <p>20 really check their work I don't think.</p> <p>21 <b>Q. Are you aware that Mr. Fell had</b></p> <p>22 <b>regular contact with Mr. Sharinn while he</b></p> <p>23 <b>was doing work for the Colvin Galloway</b></p> <p>24 <b>entities?</b></p> <p>25 A. I'm sure they would have regular</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Galloway</p> <p>2 patents, that those discussions were</p> <p>3 primarily with Todd Sharinn related to what</p> <p>4 we were going to put into the patents and</p> <p>5 how the patents should be presented to the</p> <p>6 Patent Office.</p> <p>7 I'm sure at some point we, I</p> <p>8 would have discussed it with Alan Fell</p> <p>9 because without having a patent we had no</p> <p>10 product, so -- but in terms of how the</p> <p>11 patents were formed or put together that</p> <p>12 wasn't Mr. Fell's role.</p> <p>13 <b>Q. You said that the status of the</b></p> <p>14 <b>patents would be essential to what Mr. Fell</b></p> <p>15 <b>was going to do. Those are your words.</b></p> <p>16 <b>Did you discuss with Mr. Fell the</b></p> <p>17 <b>status of the patents?</b></p> <p>18 MR. DIAMOND: Objection.</p> <p>19 BY MR. KAMINSKY:</p> <p>20 <b>Q. At any time, ever.</b></p> <p>21 MR. DIAMOND: I'm going to</p> <p>22 instruct you not to answer as to any</p> <p>23 communications you would have had with</p> <p>24 Mr. Fell in his role as counsel</p> <p>25 because they're privileged.</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Galloway</p> <p>2 contact.</p> <p>3 <b>Q. Now, if Mr. Fell was not involved</b></p> <p>4 <b>in IP matters, why were they having regular</b></p> <p>5 <b>contact, as you understand it?</b></p> <p>6 A. Well, my understanding would be</p> <p>7 that we're trying to sell that IP and Alan</p> <p>8 Fell was helping us negotiating those</p> <p>9 potential development, licensing and</p> <p>10 developing agreements. So obviously a</p> <p>11 status of the IP would be essential to</p> <p>12 those business transactions.</p> <p>13 <b>Q. Did you ever discuss the patents</b></p> <p>14 <b>with Mr. Fell?</b></p> <p>15 A. In what capacity?</p> <p>16 <b>Q. In any way. Did you ever have a</b></p> <p>17 <b>conversation with Mr. Fell about the</b></p> <p>18 <b>patents that the Colvin Galloway entities</b></p> <p>19 <b>had?</b></p> <p>20 A. I would assume that we did at</p> <p>21 some point, but I don't recall.</p> <p>22 I recall that as we were</p> <p>23 developing the patents and what we were</p> <p>24 going to put into the patents and we were</p> <p>25 prosecuting the patents or applying for the</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Galloway</p> <p>2 BY MR. KAMINSKY:</p> <p>3 <b>Q. I'm not asking you for legal</b></p> <p>4 <b>advice. I'm asking you whether you</b></p> <p>5 <b>discussed the fact, simply the fact of the</b></p> <p>6 <b>status of the patents with Mr. Fell. All I</b></p> <p>7 <b>ask for is a yes or no question.</b></p> <p>8 A. Well, if I can't remember what I</p> <p>9 specifically discussed, I guess I can't</p> <p>10 answer specifically yes or no.</p> <p>11 I would assume we had discussions</p> <p>12 about the patent at some point because as I</p> <p>13 stated it would be essential for our</p> <p>14 business entities that we have the patent.</p> <p>15 So where we stand in the process,</p> <p>16 I would assume that he communicated with</p> <p>17 Todd Sharinn and his law firm as to where</p> <p>18 we stood in that process.</p> <p>19 Beyond that, I don't recall that</p> <p>20 we would have any other particular specific</p> <p>21 discussions. We could have, we could not</p> <p>22 have, I don't recall.</p> <p>23 <b>Q. When is the first time that you</b></p> <p>24 <b>personally became aware that maintenance</b></p> <p>25 <b>fees would become due sometime in the</b></p>



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<p style="text-align: right;">Page 22</p> <p>1 A. Galloway</p> <p>2 future with respect to a patent -- strike</p> <p>3 that.</p> <p>4 When is the first time that you</p> <p>5 personally became aware that a patent</p> <p>6 holder had to pay maintenance fees to</p> <p>7 maintain a patent?</p> <p>8 A. I can't remember whether it would</p> <p>9 be from the S&amp;A Rings patent or whether it</p> <p>10 would be from the '160 Patent. When those</p> <p>11 earlier patents came out, I do recall that</p> <p>12 Mr. Sharinn communicated with us that we</p> <p>13 have the patent and that he would keep us</p> <p>14 abreast of the maintenance fees of the</p> <p>15 patent and give us a schedule.</p> <p>16 My recollection is that we sold</p> <p>17 S&amp;A Rings' patent shortly thereafter</p> <p>18 Medtronic and that they assumed that</p> <p>19 responsibility.</p> <p>20 My understanding is that</p> <p>21 Mr. Sharinn and his law firm that we</p> <p>22 continued to pay for this would continue to</p> <p>23 do that.</p> <p>24 MR. KAMINSKY: I move to strike</p> <p>25 the answer now.</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Galloway</p> <p>2 within your company to take note of the</p> <p>3 fact that maintenance fees were going to</p> <p>4 become due?</p> <p>5 A. Not that I recall.</p> <p>6 <b>Q. Did anyone within your company</b></p> <p>7 <b>oversee Mr. Sharinn or any other lawyer to</b></p> <p>8 <b>determine whether the law firms had done</b></p> <p>9 <b>anything to assure that the maintenance</b></p> <p>10 <b>fees would be paid?</b></p> <p>11 A. I don't personally know.</p> <p>12 <b>Q. Do you know if Mr. Fell did that?</b></p> <p>13 A. I don't know.</p> <p>14 <b>Q. Were you looking to Mr. Fell to</b></p> <p>15 <b>do that as your general counsel?</b></p> <p>16 A. I think we were looking to the</p> <p>17 firms that we hired to be our patent</p> <p>18 lawyers to do that. That's what I think we</p> <p>19 were doing.</p> <p>20 <b>Q. Were you looking to Mr. Fell to</b></p> <p>21 <b>oversee whether the maintenance fees were</b></p> <p>22 <b>being paid on your patents?</b></p> <p>23 MR. DIAMOND: Objection to form.</p> <p>24 Asked and answered.</p> <p>25 A. Again, I don't know that we were</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Galloway</p> <p>2 BY MR. KAMINSKY:</p> <p>3 <b>Q. Please try to answer my question.</b></p> <p>4 <b>When is the first time that you</b></p> <p>5 <b>personally learned that maintenance fees</b></p> <p>6 <b>would have to be paid by a patent holder?</b></p> <p>7 <b>I'm simply asking you when you learned that</b></p> <p>8 <b>fact.</b></p> <p>9 A. Sometime around the time of the</p> <p>10 issuance of the S&amp;A Rings patent and the</p> <p>11 '160 Patent.</p> <p>12 <b>Q. So that would have been in the</b></p> <p>13 <b>late 1990s or about 2000, is that correct?</b></p> <p>14 A. Correct.</p> <p>15 <b>Q. And Mr. Sharinn told you that</b></p> <p>16 <b>fact, didn't he?</b></p> <p>17 A. To my recollection, correct.</p> <p>18 <b>Q. Now, did you or anyone else at</b></p> <p>19 <b>the Colvin Galloway companies do anything</b></p> <p>20 <b>within the companies to make a note of the</b></p> <p>21 <b>fact that maintenance fees were going to</b></p> <p>22 <b>become due on the patent or patents?</b></p> <p>23 A. Yes, we employed Mr. Sharinn's</p> <p>24 law firm to do that.</p> <p>25 <b>Q. Did you do anything internally</b></p>	<p style="text-align: right;">Page 25</p> <p>1 A. Galloway</p> <p>2 specifically looking to Mr. Fell to do that</p> <p>3 specific thing. I think that we contracted</p> <p>4 a law firm to handle our patent prosecution</p> <p>5 and maintenance and that was Mr. Sharinn's</p> <p>6 law firm, and he told us that he would give</p> <p>7 us a schedule on that, and I don't recall</p> <p>8 that we felt obligated to then follow up</p> <p>9 and do his work.</p> <p>10 MR. KAMINSKY: I'm going to save</p> <p>11 motions to strike. I don't think it</p> <p>12 makes sense for all of us. We all can</p> <p>13 reserve that in the depositions and I</p> <p>14 think we all agree to that in each</p> <p>15 deposition.</p> <p>16 MR. DIAMOND: That's fine.</p> <p>17 BY MR. KAMINSKY:</p> <p>18 <b>Q. Now I'm trying to get a simple</b></p> <p>19 <b>yes or no answer from you. If you can't</b></p> <p>20 <b>answer it yes or no, that's fine, you can</b></p> <p>21 <b>tell me that.</b></p> <p>22 <b>But the question is: Were you</b></p> <p>23 <b>looking to Mr. Fell to oversee whether your</b></p> <p>24 <b>individual patent counsel or anyone else</b></p> <p>25 <b>was paying the maintenance fees on your</b></p>

8 (Pages 26 to 29)

<p style="text-align: right;">Page 26</p> <p>1 A. Galloway</p> <p>2 patents?</p> <p>3 A. I don't think I can simply answer</p> <p>4 that yes or no.</p> <p>5 <b>Q. Can you say anything more than</b></p> <p>6 <b>you can't answer it yes or no to tell us</b></p> <p>7 <b>whether you were or were not looking to</b></p> <p>8 <b>Mr. Fell for that role?</b></p> <p>9 A. Well, I mean, I thought you</p> <p>10 wanted a yes or no answer.</p> <p>11 <b>Q. Well, can you say yes, I was to</b></p> <p>12 <b>this extent or not to that extent, is there</b></p> <p>13 <b>anything more you can say? If there isn't,</b></p> <p>14 <b>okay, I'm going to let it go at that.</b></p> <p>15 A. No, there's nothing else.</p> <p>16 <b>Q. Okay.</b></p> <p>17 <b>Now, Mr. Sharinn told you when</b></p> <p>18 <b>each patent was issued that maintenance</b></p> <p>19 <b>fees would be due three and a half years,</b></p> <p>20 <b>seven and a half years and 11 and a half</b></p> <p>21 <b>years from the date the patent issues, is</b></p> <p>22 <b>that correct?</b></p> <p>23 A. I believe that's probably</p> <p>24 correct, yes.</p> <p>25 <b>Q. Did anyone within the Colvin</b></p>	<p style="text-align: right;">Page 28</p> <p>1 A. Galloway</p> <p>2 firm?</p> <p>3 A. I think we did as an entity.</p> <p>4 <b>Q. Did you personally do that?</b></p> <p>5 A. No.</p> <p>6 <b>Q. Did Mr. Fell decide that and then</b></p> <p>7 <b>advise you that's how it would be done?</b></p> <p>8 A. I think as an entity, whether it</p> <p>9 was myself and Dr. Colvin, probably myself</p> <p>10 and Dr. Colvin and Mr. Fell, we decided</p> <p>11 that the bookkeeping checking, and checking</p> <p>12 would be done and handled by Mr. Fell and</p> <p>13 that the correspondence would go through</p> <p>14 Mr. Fell.</p> <p>15 <b>Q. So those things would go to</b></p> <p>16 <b>Mr. Fell and you would look to him to</b></p> <p>17 <b>appropriately assign the charges to the</b></p> <p>18 <b>correct entities, is that right?</b></p> <p>19 A. That's correct.</p> <p>20 <b>Q. And were you aware that the IP</b></p> <p>21 <b>counsel were also sending copies of their</b></p> <p>22 <b>correspondence about the Colvin Galloway</b></p> <p>23 <b>companies to Mr. Fell?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. And is that something that you</b></p>
<p style="text-align: right;">Page 27</p> <p>1 A. Galloway</p> <p>2 Galloway companies diary any of those dates</p> <p>3 or make any entries in your records to keep</p> <p>4 track of those dates?</p> <p>5 A. I don't know the answer to that.</p> <p>6 <b>Q. You were the managing member of</b></p> <p>7 <b>the entities, is that correct?</b></p> <p>8 A. That's correct.</p> <p>9 <b>Q. Did you do so?</b></p> <p>10 A. No.</p> <p>11 <b>Q. Did you direct anyone to do so?</b></p> <p>12 A. No.</p> <p>13 <b>Q. Now, are you aware that the bills</b></p> <p>14 <b>for the various Colvin Galloway entities</b></p> <p>15 <b>were sent to Mr. Steiner's law firm?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. Who decided -- I'm sorry, did I</b></p> <p>18 <b>say Mr. Steiner's law firm? I meant</b></p> <p>19 <b>Mr. Fell's law firm. Did you understand</b></p> <p>20 <b>that?</b></p> <p>21 A. The Rick Steiner law firm that</p> <p>22 employed Mr. Fell, correct.</p> <p>23 <b>Q. Who directed that the legal bills</b></p> <p>24 <b>from the various IP counsel should go to</b></p> <p>25 <b>the entity's care of the Rick Steiner law</b></p>	<p style="text-align: right;">Page 29</p> <p>1 A. Galloway</p> <p>2 wanted to see occur?</p> <p>3 A. Yes.</p> <p>4 <b>Q. Because, as you said, you were</b></p> <p>5 <b>looking to Mr. Fell as the general counsel</b></p> <p>6 <b>for your entities, is that right?</b></p> <p>7 A. That's correct.</p> <p>8 <b>Q. Did you ever personally review</b></p> <p>9 <b>the billings of any of the law firms that</b></p> <p>10 <b>are involved or were involved in this</b></p> <p>11 <b>lawsuit, and those include Pepe &amp; Hazard,</b></p> <p>12 <b>Greenberg Traurig, Thelen Reid &amp; Priest --</b></p> <p>13 <b>I'm going to put Rick Steiner to the side</b></p> <p>14 <b>for the moment -- did you ever review the</b></p> <p>15 <b>legal bills that were submitted by those</b></p> <p>16 <b>three firms?</b></p> <p>17 A. I reviewed the general numbers in</p> <p>18 terms of the amount of money involved with</p> <p>19 the legal bills, but I didn't review the</p> <p>20 actual invoices or bills specifically.</p> <p>21 <b>Q. And is that something you were</b></p> <p>22 <b>looking to Mr. Fell to do, in other words,</b></p> <p>23 <b>to review the invoices in detail?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. And is it your understanding that</b></p>

9 (Pages 30 to 33)

<p style="text-align: right;">Page 30</p> <p>1 A. Galloway</p> <p>2 he did that?</p> <p>3 A. Yes.</p> <p>4 <b>Q. And then what would happen, he</b></p> <p>5 <b>would tell you that he had approved a bill</b></p> <p>6 <b>and a certain amount of money was then owed</b></p> <p>7 <b>to this firm or that firm or whichever</b></p> <p>8 <b>firm?</b></p> <p>9 A. Yes. If we had bills, he would</p> <p>10 then, he would then indicate to me or</p> <p>11 discuss with me that we had bills and that</p> <p>12 he would, that we owe these bills and then</p> <p>13 ask or have authorization to pay the bills</p> <p>14 and then he would pay the bills.</p> <p>15 <b>Q. Would he pay the bills from his</b></p> <p>16 <b>law firm and then charge that back to the</b></p> <p>17 <b>entities?</b></p> <p>18 A. No. He would pay the bills from</p> <p>19 the Quickie account because he had also</p> <p>20 signatory rights on that account.</p> <p>21 <b>Q. So there was a Quickie bank</b></p> <p>22 <b>account, correct?</b></p> <p>23 A. Correct.</p> <p>24 <b>Q. And he had signature authority</b></p> <p>25 <b>and could then pay the bills out of that</b></p>	<p style="text-align: right;">Page 32</p> <p>1 A. Galloway</p> <p>2 looked to Mr. Fell to deal with for the</p> <p>3 Galloway, the Colvin Galloway companies and</p> <p>4 then just to advise you with respect to</p> <p>5 what he had discussed with the accounting</p> <p>6 firm?</p> <p>7 A. Yes.</p> <p>8 <b>Q. Did you get periodic financial</b></p> <p>9 <b>statements for the Colvin Galloway firms?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. Were they more than annual K-1</b></p> <p>12 <b>forms and tax returns, annual tax returns?</b></p> <p>13 A. As a general, I guess as a</p> <p>14 general policy we would talk about finances</p> <p>15 at some point throughout the year depending</p> <p>16 upon if cash was needed or not needed, but</p> <p>17 generally were not specific in terms of the</p> <p>18 fine details of that throughout the year</p> <p>19 except that the year-end tax returns.</p> <p>20 <b>Q. So as far as you know, you didn't</b></p> <p>21 <b>get quarterly financial statements or</b></p> <p>22 <b>monthly financial statements, is that</b></p> <p>23 <b>right?</b></p> <p>24 A. No. Mr. Fell handled that.</p> <p>25 <b>Q. And you don't know if you got</b></p>
<p style="text-align: right;">Page 31</p> <p>1 A. Galloway</p> <p>2 account?</p> <p>3 A. Correct.</p> <p>4 <b>Q. And then after that he would</b></p> <p>5 <b>apportion or charge-back to the particular</b></p> <p>6 <b>entities within the accounting records what</b></p> <p>7 <b>their obligations were for what he was</b></p> <p>8 <b>paying, is that correct?</b></p> <p>9 A. Correct.</p> <p>10 <b>Q. Did you have outside accountants</b></p> <p>11 <b>that reviewed the books and records of the</b></p> <p>12 <b>various Colvin Galloway companies?</b></p> <p>13 A. I believe we do have an</p> <p>14 accounting firm that did the accounting</p> <p>15 work for the entity.</p> <p>16 <b>Q. Is that an accounting firm that</b></p> <p>17 <b>Mr. Fell hired and dealt with, or did you</b></p> <p>18 <b>deal with that account?</b></p> <p>19 A. I think it was an accounting firm</p> <p>20 that he hired and dealt with that then did</p> <p>21 the accounting for the entity.</p> <p>22 <b>Q. Do you know the name of the</b></p> <p>23 <b>accounting firm?</b></p> <p>24 A. No, not specifically.</p> <p>25 <b>Q. Is that another area in which you</b></p>	<p style="text-align: right;">Page 33</p> <p>1 A. Galloway</p> <p>2 quarterly or monthly or other periodic</p> <p>3 financial statements other than on an</p> <p>4 annual basis?</p> <p>5 A. I personally didn't.</p> <p>6 <b>Q. And you don't know today whether</b></p> <p>7 <b>the entities did, do you?</b></p> <p>8 A. No.</p> <p>9 <b>Q. When Mr. Fell billed you, that is</b></p> <p>10 <b>the Colvin Galloway entities, did he submit</b></p> <p>11 <b>separate bills for each of the entities, or</b></p> <p>12 <b>did he submit one bill and then internally</b></p> <p>13 <b>allocate the charges to the appropriate</b></p> <p>14 <b>entities?</b></p> <p>15 A. No, there were three very</p> <p>16 distinct entities with three completely</p> <p>17 different enterprises and objectives and he</p> <p>18 would -- the books for the entities were</p> <p>19 completely separate, the billing time for</p> <p>20 Mr. Fell was also completely separate and</p> <p>21 always allocated specifically for those</p> <p>22 entities.</p> <p>23 <b>Q. And would he submit actual</b></p> <p>24 <b>physical bills for the separate entities?</b></p> <p>25 A. Yes.</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 34</p> <p>1 A. Galloway</p> <p>2 <b>Q. Now, how were his bills paid,</b></p> <p>3 <b>were those also paid after you approved the</b></p> <p>4 <b>bills out of that Quickie account?</b></p> <p>5 A. Yes, they were.</p> <p>6 <b>Q. And then he was again responsible</b></p> <p>7 <b>to allocate as between the payments which</b></p> <p>8 <b>ones applied to which particular Colvin</b></p> <p>9 <b>Galloway entity, is that correct?</b></p> <p>10 A. No, that's not exactly correct,</p> <p>11 at least to what I understand you're</p> <p>12 saying. The bills were paid for the S&amp;A</p> <p>13 Rings account out of the S&amp;A Rings account.</p> <p>14 The bills for the Quickie account</p> <p>15 were paid out of the Quickie account, and</p> <p>16 the bills for the E-surge account were paid</p> <p>17 out of the E-surge account. And the same</p> <p>18 arrangement was true for each, but the</p> <p>19 money was completely separate and the bills</p> <p>20 were completely separate and the accounting</p> <p>21 was completely separate.</p> <p>22 So -- and then if there was not</p> <p>23 cash within the entity to cover those</p> <p>24 bills, then that would be proportioned out</p> <p>25 to the members of that particular entity to</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Galloway</p> <p>2 entities to contribute additional money to</p> <p>3 pay bills?</p> <p>4 A. Yes.</p> <p>5 <b>Q. Were there any for Quickie?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. Were there any for S&amp;A Rings?</b></p> <p>8 A. For S&amp;A Rings, there were --</p> <p>9 after initial start up capital cost, I</p> <p>10 think there were no others beyond that</p> <p>11 because S&amp;A Rings quickly entered into a</p> <p>12 development agreement and had cash within</p> <p>13 the entity to pay for the bills through the</p> <p>14 cash flow of that development entity. So I</p> <p>15 don't think there was additional capital</p> <p>16 calls for that.</p> <p>17 For E-surge, there was initial</p> <p>18 capital expenses, but again not to my</p> <p>19 recollection much, if any, very minimal, if</p> <p>20 any, additional capital expenses for</p> <p>21 E-surge because that entity ended into a</p> <p>22 development agreement and there was cash</p> <p>23 flow from that development agreement to pay</p> <p>24 for that.</p> <p>25 Quickie, on the other hand, had</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Galloway</p> <p>2 come up with the cash to pay for those</p> <p>3 bills.</p> <p>4 So if S&amp;A Rings had bills, it</p> <p>5 would be the members of S&amp;A Rings and a</p> <p>6 certain percentage of it put the money into</p> <p>7 the S&amp;A Rings account to pay for the S&amp;A</p> <p>8 Rings bills.</p> <p>9 If it was a Quickie account, what</p> <p>10 Quickie was doing, then Quickie would get</p> <p>11 bills for what Quickie was doing and we</p> <p>12 would pay for those Quickie bills through</p> <p>13 Quickie, and then if we needed cash to</p> <p>14 support that, that would go back to the</p> <p>15 members of the corporation to come up with</p> <p>16 that capital to pay for those bills.</p> <p>17 And likewise, that same process</p> <p>18 was separate and is what would happen with</p> <p>19 E-surge.</p> <p>20 <b>Q. And you looked to Mr. Fell to</b></p> <p>21 <b>manage that process for you?</b></p> <p>22 A. He managed each of the three</p> <p>23 processes.</p> <p>24 <b>Q. Were there ever, I'll call them</b></p> <p>25 <b>capital calls, upon the members of the</b></p>	<p style="text-align: right;">Page 37</p> <p>1 A. Galloway</p> <p>2 at times significant expenditures beyond</p> <p>3 the inflow of cash, particularly once we</p> <p>4 were not within a development agreement,</p> <p>5 and so therefore there were calls for</p> <p>6 capital cash flow into that.</p> <p>7 <b>Q. Now, Quickie, as you said, had</b></p> <p>8 <b>two patents, correct? Did Quickie enter</b></p> <p>9 <b>into a license agreement with anyone other</b></p> <p>10 <b>than Medtronic with respect to the '160</b></p> <p>11 <b>Patent?</b></p> <p>12 A. No, we entered into -- the only</p> <p>13 license agreement that we actually entered</p> <p>14 into with the '160 Patent was Medtronic.</p> <p>15 <b>Q. How long did that license</b></p> <p>16 <b>agreement last?</b></p> <p>17 MR. DIAMOND: Objection to form.</p> <p>18 MR. KAMINSKY: Okay. Let me</p> <p>19 restate the question.</p> <p>20 BY MR. KAMINSKY:</p> <p>21 <b>Q. What was the duration of that</b></p> <p>22 <b>license agreement?</b></p> <p>23 A. I don't recall the exact amount</p> <p>24 of time. It was to my recollection several</p> <p>25 years, maybe two years, maybe around that</p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 38</p> <p>1 A. Galloway</p> <p>2 time.</p> <p>3 <b>Q. And Medtronic terminated the</b></p> <p>4 <b>license agreement, is that correct?</b></p> <p>5 A. Correct.</p> <p>6 <b>Q. Why did Medtronic terminate the</b></p> <p>7 <b>license agreement?</b></p> <p>8 MR. DIAMOND: Objection to form.</p> <p>9 Lack of foundation. If you know.</p> <p>10 A. First of all, I don't know</p> <p>11 exactly their business reasons for</p> <p>12 terminating the agreement. We were working</p> <p>13 on a specific product with Medtronic and we</p> <p>14 got up to a certain point and they at that</p> <p>15 point decided they did not want to go</p> <p>16 forward with that development agreement,</p> <p>17 but the specific reasons I don't know.</p> <p>18 <b>Q. Who would know the answer to that</b></p> <p>19 <b>question?</b></p> <p>20 A. I suppose the people in Medtronic</p> <p>21 that made that decision.</p> <p>22 <b>Q. Did Mr. Fell ever tell you that</b></p> <p>23 <b>Medtronic told him that they didn't think</b></p> <p>24 <b>that the technology was capable of being</b></p> <p>25 <b>commercialized?</b></p>	<p style="text-align: right;">Page 40</p> <p>1 A. Galloway</p> <p>2 ANSWER: Not specifically.</p> <p>3 QUESTION: Did they generally?</p> <p>4 ANSWER: Generally, they said</p> <p>5 they didn't think the technology was</p> <p>6 capable of being commercialized."</p> <p>7 <b>Q. Did you ever hear that testimony</b></p> <p>8 <b>before?</b></p> <p>9 A. Not that I recall.</p> <p>10 <b>Q. Were you aware that Mr. Fell had</b></p> <p>11 <b>given testimony substantially of that</b></p> <p>12 <b>nature?</b></p> <p>13 MR. DIAMOND: Objection to form.</p> <p>14 A. Well, I was aware that he gave</p> <p>15 testimony, but as I said, I hadn't really</p> <p>16 read his testimony.</p> <p>17 <b>Q. Now, the Colvin Galloway entities</b></p> <p>18 <b>did not attempt to license the '160 Patent</b></p> <p>19 <b>to anyone else after Medtronic terminated</b></p> <p>20 <b>its license with Quickie, is that correct?</b></p> <p>21 A. No, that's -- well, let me think</p> <p>22 about that one minute -- no, that's not</p> <p>23 correct.</p> <p>24 <b>Q. Do you remember that you were</b></p> <p>25 <b>deposed in the Quickie Medtronic case on</b></p>
<p style="text-align: right;">Page 39</p> <p>1 A. Galloway</p> <p>2 A. I don't recall that.</p> <p>3 <b>Q. There was a lawsuit between</b></p> <p>4 <b>Quickie and Medtronic in the Federal Court</b></p> <p>5 <b>in New York starting in 2002 and for some</b></p> <p>6 <b>years thereafter, is that correct?</b></p> <p>7 A. That's correct.</p> <p>8 <b>Q. You were deposed in that lawsuit,</b></p> <p>9 <b>is that correct?</b></p> <p>10 A. That's correct.</p> <p>11 <b>Q. Are you aware that Mr. Fell was</b></p> <p>12 <b>also deposed in that lawsuit?</b></p> <p>13 A. I believe that's correct.</p> <p>14 <b>Q. Did you ever read Mr. Fell's</b></p> <p>15 <b>deposition in that lawsuit?</b></p> <p>16 A. Not that I recall.</p> <p>17 <b>Q. I'm going to read you some</b></p> <p>18 <b>testimony from Mr. Fell's deposition and</b></p> <p>19 <b>tell me if this is the first time you've</b></p> <p>20 <b>ever heard that, this testimony.</b></p> <p>21 <b>This is on page 87 of his</b></p> <p>22 <b>transcript:</b></p> <p>23 QUESTION: So Medtronic never</p> <p>24 told you why they terminated the</p> <p>25 agreement?</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Galloway</p> <p>2 July 30, 2003?</p> <p>3 A. Yes, I do.</p> <p>4 <b>Q. In that deposition you were asked</b></p> <p>5 <b>this question and gave this answer on page</b></p> <p>6 <b>128:</b></p> <p>7 QUESTION: After the</p> <p>8 termination, did you attempt to pursue</p> <p>9 this technology we've been talking</p> <p>10 about with a company other than</p> <p>11 Medtronic?</p> <p>12 ANSWER: No.</p> <p>13 Do you recall giving that</p> <p>14 testimony?</p> <p>15 A. Yes, I do.</p> <p>16 <b>Q. Okay.</b></p> <p>17 <b>Is that testimony correct?</b></p> <p>18 A. At that time it was correct.</p> <p>19 <b>Q. Have you since this deposition</b></p> <p>20 <b>sought to license the '160 Patent?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. When did you attempt to do so?</b></p> <p>23 A. It was -- I don't know the exact</p> <p>24 date -- it was approximately the same time</p> <p>25 that we found that the patent had not been</p>

12 (Pages 42 to 45)

<p style="text-align: right;">Page 42</p> <p>1 A. Galloway</p> <p>2 maintained, whenever we were aware of that,</p> <p>3 whatever that time frame was that we</p> <p>4 initially became aware of that.</p> <p>5 I don't remember the specific</p> <p>6 dates. We were actually in the process of</p> <p>7 talking to medical device companies to</p> <p>8 develop an auto attachment type of valve</p> <p>9 product of which we thought we would have</p> <p>10 two patents, which would be the '160 Patent</p> <p>11 and the other '243 Patent, and then we</p> <p>12 became aware that we didn't any longer have</p> <p>13 the '160 Patent.</p> <p>14 <b>Q. What year was that?</b></p> <p>15 A. I don't recall off the top of my</p> <p>16 head.</p> <p>17 <b>Q. When did you become aware that</b></p> <p>18 <b>you did not have the '160 Patent any</b></p> <p>19 <b>longer?</b></p> <p>20 A. Again, I can't tell you the dates</p> <p>21 off the top of my head.</p> <p>22 <b>Q. I'm going to read to you from</b></p> <p>23 <b>Quickie's response to interrogatories</b></p> <p>24 <b>served by Greenberg Traurig in this action,</b></p> <p>25 <b>this is a verified response of July 13,</b></p>	<p style="text-align: right;">Page 44</p> <p>1 A. Galloway</p> <p>2 2006 that you learned that?</p> <p>3 A. It appeared that according to</p> <p>4 this document that it was around 2006.</p> <p>5 <b>Q. Do you have any other information</b></p> <p>6 <b>as to when you learned or -- strike that.</b></p> <p>7 <b>Do you deny that it was on July</b></p> <p>8 <b>23rd, 2006?</b></p> <p>9 MR. DIAMOND: Objection to form.</p> <p>10 A. I guess I can't confirm or deny.</p> <p>11 I don't remember specifically.</p> <p>12 <b>Q. After the patent expired, Quickie</b></p> <p>13 <b>attempted to get the patent reinstated, is</b></p> <p>14 <b>that correct?</b></p> <p>15 A. That's correct.</p> <p>16 <b>Q. Did you participate with</b></p> <p>17 <b>Quickie's counsel in preparing the papers</b></p> <p>18 <b>that were submitted in support of the</b></p> <p>19 <b>petition to reinstate the patent?</b></p> <p>20 A. No.</p> <p>21 <b>Q. Do you remember submitting a</b></p> <p>22 <b>statement in support of the petition to</b></p> <p>23 <b>reinstate the patent?</b></p> <p>24 A. I remember there was a statement</p> <p>25 submitted.</p>
<p style="text-align: right;">Page 43</p> <p>1 A. Galloway</p> <p>2 2007, and question 11 asks:</p> <p>3 "State how Quickie learned that</p> <p>4 the Quickie patent had expired and identify</p> <p>5 who advised Quickie of that fact?"</p> <p>6 Response: "On July 23, 2006,</p> <p>7 Quickie learned that the '160 Patent had</p> <p>8 expired not from the lawyers Quickie had</p> <p>9 hired to pursue and protect the patent, but</p> <p>10 from Michael J. Gerard, senior director of</p> <p>11 research and development at St. Jude</p> <p>12 Medical, who informed Dr. Stephen Colvin,</p> <p>13 MD that St. Jude was no longer interested</p> <p>14 in licensing the '160 Patent because it was</p> <p>15 expired."</p> <p>16 MR. DIAMOND: And is that the</p> <p>17 complete question and answer?</p> <p>18 MR. KAMINSKY: Yes.</p> <p>19 A. Can I see that document?</p> <p>20 <b>Q. You certainly can. It's</b></p> <p>21 <b>underlined. Some of the answer I would</b></p> <p>22 <b>think is not responsive, but we're going to</b></p> <p>23 <b>save all of that for a later time.</b></p> <p>24 <b>My question is: Does that</b></p> <p>25 <b>refresh your recollection that it was in</b></p>	<p style="text-align: right;">Page 45</p> <p>1 A. Galloway</p> <p>2 <b>Q. Let me show you a document that's</b></p> <p>3 <b>been marked Exhibit 54, which is a</b></p> <p>4 <b>supplement to the petition that's signed by</b></p> <p>5 <b>Maier &amp; Maier.</b></p> <p>6 <b>Do you know who Maier &amp; Maier</b></p> <p>7 <b>are?</b></p> <p>8 A. Yes, I do.</p> <p>9 <b>Q. They were your, they were</b></p> <p>10 <b>Quickie's counsel in connection with the</b></p> <p>11 <b>application and petition to reinstate the</b></p> <p>12 <b>patent, is that right?</b></p> <p>13 A. Yes, they were.</p> <p>14 <b>Q. And, in fact, you personally</b></p> <p>15 <b>signed the Power of Attorney that gave him</b></p> <p>16 <b>authority to do that on behalf of Quickie,</b></p> <p>17 <b>didn't you?</b></p> <p>18 A. Not that I recall.</p> <p>19 (Exhibit 55, Petition to Accept</p> <p>20 Unavoidably Delayed Payment of</p> <p>21 Maintenance Fees in an Expired Patent</p> <p>22 (37 CFR 1.378(b)), marked for</p> <p>23 identification, as of this date.)</p> <p>24 BY MR. KAMINSKY:</p> <p>25 <b>Q. Let me show you a document</b></p>



13 (Pages 46 to 49)

<p style="text-align: right;">Page 46</p> <p>1 A. Galloway</p> <p>2 which we are marking Exhibit 55.</p> <p>3 It's entitled petition to accept</p> <p>4 unavoidably delayed payment of</p> <p>5 maintenance fees in an expired patent</p> <p>6 (37 CFR 1.378(b)).</p> <p>7 I ask you whether you've ever</p> <p>8 seen that document before.</p> <p>9 A. Yes, I must have seen this</p> <p>10 document and I signed this document.</p> <p>11 <b>Q. And does that refresh your</b></p> <p>12 <b>recollection that you signed the grant of</b></p> <p>13 <b>limited Power of Attorney whereby you</b></p> <p>14 <b>appointed Maier &amp; Maier as counsel for</b></p> <p>15 <b>Quickie in connection with the petition to</b></p> <p>16 <b>reinstate the patent?</b></p> <p>17 A. This document says that we</p> <p>18 granted limited Power of Attorney to Maier</p> <p>19 &amp; Maier for the above-referenced petition</p> <p>20 in the Patent and Trademark Office.</p> <p>21 <b>Q. In fact, it says, to be complete,</b></p> <p>22 <b>that Maier &amp; Maier, Timothy Maier and</b></p> <p>23 <b>Christopher Maier, both jointly and</b></p> <p>24 <b>separately as attorneys with full power of</b></p> <p>25 <b>substitution and revocation file and</b></p>	<p style="text-align: right;">Page 48</p> <p>1 A. Galloway</p> <p>2 that Mr. Maier says on behalf of Quickie:</p> <p>3 "The actions and inactions of</p> <p>4 Thelen Reid &amp; Priest, Medtronic's</p> <p>5 re-examination requests and even the U.S.</p> <p>6 PTO led the patent owner to believe that</p> <p>7 their '160 Patent was viable. Not until</p> <p>8 July 23, 2006 did the patent owner first</p> <p>9 learn that their valuable '160 Patent had</p> <p>10 expired."</p> <p>11 Do you see that?</p> <p>12 A. Yes, I do.</p> <p>13 <b>Q. Is that a correct statement?</b></p> <p>14 A. I believe that's correct.</p> <p>15 <b>Q. Now, between July 2003 when you</b></p> <p>16 <b>gave your deposition in the Medtronic</b></p> <p>17 <b>action and July 2006 when Quickie learned</b></p> <p>18 <b>that the patent had expired, did Quickie</b></p> <p>19 <b>enter into a license agreement with any</b></p> <p>20 <b>other entity?</b></p> <p>21 A. Are you asking related to the</p> <p>22 '160 Patent?</p> <p>23 <b>Q. Yes.</b></p> <p>24 A. Between that time interval,</p> <p>25 Quickie did not enter into a licensing</p>
<p style="text-align: right;">Page 47</p> <p>1 A. Galloway</p> <p>2 prosecute this, the above petition, in the</p> <p>3 Patent and Trademark Office, is that</p> <p>4 correct?</p> <p>5 A. That's what it says, correct.</p> <p>6 <b>Q. And that's what the Power of</b></p> <p>7 <b>Attorney is for, is that right?</b></p> <p>8 A. My understanding is that's true.</p> <p>9 <b>Q. And you signed it, correct?</b></p> <p>10 A. Correct.</p> <p>11 <b>Q. Now, would you look again at</b></p> <p>12 <b>Exhibit 54 that I handed to you. That's a</b></p> <p>13 <b>document that Maier &amp; Maier submitted on</b></p> <p>14 <b>behalf of Quickie, is that correct, in</b></p> <p>15 <b>connection with the petition to reinstate</b></p> <p>16 <b>the patent, correct?</b></p> <p>17 A. Yes, it appears that that's a</p> <p>18 letter prepared by Timothy Maier.</p> <p>19 <b>Q. On behalf of Quickie, correct?</b></p> <p>20 A. Correct.</p> <p>21 <b>Q. As a supplement to the petition</b></p> <p>22 <b>under 37 CFR Section 1.378(b), correct?</b></p> <p>23 A. Correct.</p> <p>24 <b>Q. Would you look at the first full</b></p> <p>25 <b>paragraph of that supplement, do you see in</b></p>	<p style="text-align: right;">Page 49</p> <p>1 A. Galloway</p> <p>2 agreement related to the '160 Patent.</p> <p>3 <b>Q. Has Quickie retained any outside</b></p> <p>4 <b>consultant or expert at this time with</b></p> <p>5 <b>respect to the '160 Patent?</b></p> <p>6 MR. DIAMOND: Counsel has.</p> <p>7 MR. KAMINSKY: Can you identify</p> <p>8 the person for us?</p> <p>9 MR. DIAMOND: Yes. You're going</p> <p>10 to be getting an expert report in the</p> <p>11 next couple of days.</p> <p>12 BY MR. KAMINSKY:</p> <p>13 <b>Q. Have you spoken to the potential</b></p> <p>14 <b>expert, Dr. Galloway?</b></p> <p>15 A. No.</p> <p>16 <b>Q. Do you know the name of the</b></p> <p>17 <b>potential expert?</b></p> <p>18 A. No.</p> <p>19 MR. KAMINSKY: Mr. Diamond, do</p> <p>20 you feel --</p> <p>21 MR. DIAMOND: I'll be happy to</p> <p>22 tell you, it's Mark Berkman.</p> <p>23 BY MR. KAMINSKY:</p> <p>24 <b>Q. Do you know who Mark Berkman is?</b></p> <p>25 A. No.</p>

14 (Pages 50 to 53)

<p style="text-align: right;">Page 50</p> <p>1 A. Galloway</p> <p>2 <b>Q. Have you ever read an expert</b></p> <p>3 <b>report in connection with this litigation?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Do you know whose expert report</b></p> <p>6 <b>you read?</b></p> <p>7 A. I don't recall the name of the</p> <p>8 expert, but the expert report that I read</p> <p>9 was an expert report that was obtained for</p> <p>10 us by Greenberg or at the request of</p> <p>11 Greenberg in association with what we</p> <p>12 termed the Markman Hearing on the initial,</p> <p>13 as a part of the initial litigation of the</p> <p>14 patent against Medtronic for patent</p> <p>15 infringement, and there was an expert</p> <p>16 retained that gave an evaluation of value</p> <p>17 and damages and that report I read at some</p> <p>18 point in the distant future, I don't recall</p> <p>19 all the specifics of it.</p> <p>20 <b>Q. Do you know whose report that</b></p> <p>21 <b>was, in other words, who the author of that</b></p> <p>22 <b>report was?</b></p> <p>23 A. No.</p> <p>24 <b>Q. Did you ever read an expert</b></p> <p>25 <b>report by Medtronic's expert?</b></p>	<p style="text-align: right;">Page 52</p> <p>1 A. Galloway</p> <p>2 <b>Q. Do you remember who introduced</b></p> <p>3 <b>you to Todd Sharinn?</b></p> <p>4 A. I don't specifically recall.</p> <p>5 <b>Q. Now, thereafter, Mr. Sharinn left</b></p> <p>6 <b>Pepe &amp; Hazard and joined Greenberg Traurig,</b></p> <p>7 <b>is that right?</b></p> <p>8 A. That's correct.</p> <p>9 <b>Q. Quickie made the decision to</b></p> <p>10 <b>transfer its, the patent work of the</b></p> <p>11 <b>Quickie Galloway companies from Pepe &amp;</b></p> <p>12 <b>Hazard to Greenberg Traurig, is that right?</b></p> <p>13 A. Correct.</p> <p>14 <b>Q. Who made that decision?</b></p> <p>15 A. That was made jointly by myself</p> <p>16 and Dr. Colvin.</p> <p>17 <b>Q. Did Mr. Fell have any input in</b></p> <p>18 <b>that decision?</b></p> <p>19 A. I don't recall. I recall that we</p> <p>20 were working with Todd Sharinn and we were</p> <p>21 happy with Todd Sharinn and liked Todd</p> <p>22 Sharinn, and when he moved firms we wanted</p> <p>23 to follow him to that firm.</p> <p>24 <b>Q. Had you developed a personal</b></p> <p>25 <b>relationship with Mr. Sharinn?</b></p>
<p style="text-align: right;">Page 51</p> <p>1 A. Galloway</p> <p>2 A. I don't recall that I did.</p> <p>3 <b>Q. Initially in connection with the</b></p> <p>4 <b>'160 Patent, you said that Quickie or the</b></p> <p>5 <b>Colvin Galloway companies retained Todd</b></p> <p>6 <b>Sharinn and the Pepe &amp; Hazard firm, is that</b></p> <p>7 <b>correct?</b></p> <p>8 A. Initially Quickie retained Todd</p> <p>9 Sharinn as a part of the Pepe &amp; Hazard</p> <p>10 firm, correct.</p> <p>11 <b>Q. Did you meet Todd Sharinn at that</b></p> <p>12 <b>time?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. How did you come to meet him?</b></p> <p>15 A. I don't remember specifically.</p> <p>16 We had quite a few meetings with Todd</p> <p>17 Sharinn. Parts or at least some of the</p> <p>18 meetings were related to the actual</p> <p>19 technology and preparation of the patent</p> <p>20 application.</p> <p>21 <b>Q. Who selected Todd Sharinn as</b></p> <p>22 <b>counsel?</b></p> <p>23 MR. DIAMOND: Objection. Asked</p> <p>24 and answered.</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 53</p> <p>1 A. Galloway</p> <p>2 A. To some degree, yes.</p> <p>3 <b>Q. And are you aware that Dr. Colvin</b></p> <p>4 <b>had developed a personal relationship with</b></p> <p>5 <b>him?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. How often did you speak to Todd</b></p> <p>8 <b>Sharinn during the period that he was at</b></p> <p>9 <b>Pepe &amp; Hazard?</b></p> <p>10 A. I personally did not speak with</p> <p>11 him that frequently.</p> <p>12 <b>Q. Did anyone else on behalf of the</b></p> <p>13 <b>Colvin Galloway companies speak with</b></p> <p>14 <b>Mr. Sharinn?</b></p> <p>15 A. I don't know specifically, but it</p> <p>16 was my impression that Dr. Colvin spoke</p> <p>17 with him quite frequently.</p> <p>18 <b>Q. How about Dr. Grasse?</b></p> <p>19 A. I don't know specifically, but --</p> <p>20 I don't know specifically.</p> <p>21 <b>Q. Now, when Todd Sharinn was at the</b></p> <p>22 <b>Greenberg Traurig firm, the Greenberg</b></p> <p>23 <b>Taurig firm acted as counsel for the</b></p> <p>24 <b>Colvin Galloway companies in connection</b></p> <p>25 <b>with their patent matters, is that correct?</b></p>



15 (Pages 54 to 57)

<p style="text-align: right;">Page 54</p> <p>1 A. Galloway</p> <p>2 A. When Todd Sharinn was at the</p> <p>3 Greenberg Traurig firm, again to be more</p> <p>4 specific, he initially, I believe, he may</p> <p>5 have initially or may have not initially</p> <p>6 still continued to represent some of our</p> <p>7 matters with S&amp;A Rings, but I think in</p> <p>8 relatively short order there was less for</p> <p>9 him to do with that because we were done</p> <p>10 with that, if you will, and entered into a</p> <p>11 licensing development agreement.</p> <p>12 He represented Quickie for</p> <p>13 several matters related to patents that we,</p> <p>14 that patent and patents that we were</p> <p>15 pursuing.</p> <p>16 <b>Q. And when he was there, Quickie</b></p> <p>17 <b>began the lawsuit against Medtronic, is</b></p> <p>18 <b>that correct?</b></p> <p>19 A. Correct.</p> <p>20 <b>Q. And initially Greenberg Traurig</b></p> <p>21 <b>would counsel for Quickie in that</b></p> <p>22 <b>litigation, is that right?</b></p> <p>23 A. In the initial litigation, in the</p> <p>24 initial phase of the litigation the</p> <p>25 Greenberg firm was counsel for Quickie.</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Galloway</p> <p>2 <b>Q. Did you know either of those two</b></p> <p>3 <b>lawyers before the fall of 2002?</b></p> <p>4 A. Personally I did not.</p> <p>5 <b>Q. Did Dr. Colvin know them?</b></p> <p>6 A. I believe Dr. Colvin knew Mark</p> <p>7 Evens.</p> <p>8 <b>Q. During that year Mark Evens</b></p> <p>9 <b>became Dr. Colvin's brother-in-law, is that</b></p> <p>10 <b>correct?</b></p> <p>11 A. I believe that's correct.</p> <p>12 <b>Q. Is that why the business was</b></p> <p>13 <b>transferred to Thelen Reid &amp; Priest?</b></p> <p>14 A. No. I think that's how</p> <p>15 Dr. Colvin became to know Mark Evens and</p> <p>16 then Dr. Colvin and I discussed how we</p> <p>17 wanted to proceed with our litigation and</p> <p>18 we felt that Thelen Reid &amp; Priest was the</p> <p>19 team we wanted to use.</p> <p>20 <b>Q. Well, in fact, everyone was more</b></p> <p>21 <b>than satisfied with the result of the</b></p> <p>22 <b>Markman Hearing, isn't that correct?</b></p> <p>23 MR. DIAMOND: Objection to form.</p> <p>24 BY MR. KAMINSKY:</p> <p>25 <b>Q. Is it not correct that Quickie</b></p>
<p style="text-align: right;">Page 55</p> <p>1 A. Galloway</p> <p>2 <b>Q. And do you recall that the</b></p> <p>3 <b>Greenberg firm remained counsel through the</b></p> <p>4 <b>Markman Hearing which occurred in September</b></p> <p>5 <b>of 2002?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. Promptly thereafter Greenberg</b></p> <p>8 <b>Traurig was replaced as counsel for Quickie</b></p> <p>9 <b>in that matter, is that correct?</b></p> <p>10 A. Correct.</p> <p>11 <b>Q. That being the Medtronic case?</b></p> <p>12 A. Yeah, shortly after the Markman</p> <p>13 Hearing we replaced Greenberg Traurig as a</p> <p>14 representative for litigation against</p> <p>15 Medtronic with Thelen.</p> <p>16 <b>Q. Who made the decision to transfer</b></p> <p>17 <b>the case from Greenberg Traurig to Thelen</b></p> <p>18 <b>Reid &amp; Priest?</b></p> <p>19 A. Dr. Colvin and I did.</p> <p>20 <b>Q. Was there a particular lawyer at</b></p> <p>21 <b>Thelen Reid &amp; Priest that you transferred</b></p> <p>22 <b>the case to?</b></p> <p>23 A. I believe that -- well, there was</p> <p>24 I think two lawyers, there was Mark Evens</p> <p>25 and Bob Krebs.</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Galloway</p> <p>2 was more than satisfied with the result of</p> <p>3 the Markman Hearing that Greenberg Traurig</p> <p>4 had handled for Quickie?</p> <p>5 A. Well, I can't speak for</p> <p>6 Dr. Colvin, I can't speak for Alan Fell. I</p> <p>7 of my simplistic view of the Markman</p> <p>8 Hearing understood that it was a fairly</p> <p>9 favorable hearing. So I was relatively</p> <p>10 pleased with that.</p> <p>11 <b>Q. Did you have any criticism of</b></p> <p>12 <b>Greenberg Traurig or Mr. Sharinn in the</b></p> <p>13 <b>handling of the Medtronic case in or as of</b></p> <p>14 <b>September and October 2002?</b></p> <p>15 MR. DIAMOND: You personally.</p> <p>16 A. I personally had a very good</p> <p>17 personal and professional interaction with</p> <p>18 Greenberg Traurig.</p> <p>19 <b>Q. Did you feel they had let you</b></p> <p>20 <b>down in any way?</b></p> <p>21 A. No.</p> <p>22 <b>Q. Were you satisfied with their</b></p> <p>23 <b>legal services?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. Did you feel that their legal</b></p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 58</p> <p>1 A. Galloway</p> <p>2 services were capable and adequate for your</p> <p>3 needs?</p> <p>4 A. Absolutely.</p> <p>5 <b>Q. Did Dr. Colvin ever say anything</b></p> <p>6 <b>to you to lead you to believe that he was</b></p> <p>7 <b>dissatisfied in any way with the legal</b></p> <p>8 <b>representation that you had been getting</b></p> <p>9 <b>from Mr. Sharinn or Greenberg Traurig?</b></p> <p>10 A. No.</p> <p>11 <b>Q. Why then did you feel that it was</b></p> <p>12 <b>appropriate to make a change to Thelen Reid</b></p> <p>13 <b>&amp; Priest if it was for any reason other</b></p> <p>14 <b>than that Mark Evens was now Dr. Colvin's</b></p> <p>15 <b>brother-in-law?</b></p> <p>16 A. Well, my recollection is that</p> <p>17 Dr. Colvin for whatever reason, and I don't</p> <p>18 know the reasons, felt that Thelen Reid &amp;</p> <p>19 Priest was the firm that we would want to</p> <p>20 use going forward to proceed with</p> <p>21 litigation and I deferred to him on that</p> <p>22 decision.</p> <p>23 <b>Q. Are you aware that Dr. Colvin</b></p> <p>24 <b>told Todd Sharinn that the reason that the</b></p> <p>25 <b>change was being made is because Mark Evens</b></p>	<p style="text-align: right;">Page 60</p> <p>1 A. Galloway</p> <p>2 A. Yes, yes.</p> <p>3 <b>Q. Okay.</b></p> <p>4 <b>Now would you look at --</b></p> <p>5 MR. DIAMOND: I don't know if</p> <p>6 this is a good time, but wherever you</p> <p>7 get a breaking point.</p> <p>8 MR. KAMINSKY: Sure, by all</p> <p>9 means.</p> <p>10 (Recess taken from 10:46 a.m. to</p> <p>11 10:55 a.m.)</p> <p>12 BY MR. KAMINSKY:</p> <p>13 <b>Q. Do you remember that Quickie</b></p> <p>14 <b>signed a revocation of the powers of</b></p> <p>15 <b>attorney that Greenberg Traurig previously</b></p> <p>16 <b>had with respect to the '160 Patent?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. Let me show you a document which</b></p> <p>19 <b>has been marked Exhibit 51. It's a letter</b></p> <p>20 <b>from Thelen Reid &amp; Priest to Dr. Colvin at</b></p> <p>21 <b>Quickie dated April 16th which encloses and</b></p> <p>22 <b>attaches a revocation of power form with</b></p> <p>23 <b>respect to the '160 Patent.</b></p> <p>24 <b>Have you ever seen that document</b></p> <p>25 <b>before?</b></p>
<p style="text-align: right;">Page 59</p> <p>1 A. Galloway</p> <p>2 had become his brother-in-law?</p> <p>3 MR. DIAMOND: Objection. Form.</p> <p>4 A. I'm not aware of that.</p> <p>5 <b>Q. Now, at a certain point you</b></p> <p>6 <b>revoked the authority for Greenberg Traurig</b></p> <p>7 <b>to represent Quickie before the United</b></p> <p>8 <b>States Patent and Trademark Office with</b></p> <p>9 <b>respect to the '160 Patent, is that</b></p> <p>10 <b>correct?</b></p> <p>11 MR. DIAMOND: Objection to form.</p> <p>12 A. Well, I don't know if that's -- I</p> <p>13 don't know the specifics of that.</p> <p>14 <b>Q. Let us show you Exhibit 50.</b></p> <p>15 <b>Exhibit 50 is a notice of a</b></p> <p>16 <b>change of Power of Attorney that was sent</b></p> <p>17 <b>to Todd Sharinn of the Greenberg firm on</b></p> <p>18 <b>April 2003.</b></p> <p>19 <b>Were you aware that there had</b></p> <p>20 <b>been a change of the Power of Attorney with</b></p> <p>21 <b>respect to the '160 Patent at the U.S.</b></p> <p>22 <b>Patent and Trademark Office?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. That's just one page. You're</b></p> <p>25 <b>welcome to look at anything you want.</b></p>	<p style="text-align: right;">Page 61</p> <p>1 A. Galloway</p> <p>2 A. I don't recall that I have.</p> <p>3 <b>Q. Okay.</b></p> <p>4 <b>Would you look at the last</b></p> <p>5 <b>page -- I'm sorry, the second-to-last page</b></p> <p>6 <b>of the document and do you see there is a</b></p> <p>7 <b>signature on that, above the name that's</b></p> <p>8 <b>printed Aubrey C. Galloway.</b></p> <p>9 <b>Do you see that?</b></p> <p>10 A. Yes, I do.</p> <p>11 <b>Q. Is that your signature above</b></p> <p>12 <b>that?</b></p> <p>13 A. Yes, it is.</p> <p>14 <b>Q. Now, would you look at the page</b></p> <p>15 <b>just before that and do you see that that</b></p> <p>16 <b>is a document which is entitled Power of</b></p> <p>17 <b>Attorney by assignee of entire interest</b></p> <p>18 <b>revocation of prior powers.</b></p> <p>19 <b>Do you see that?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. You signed that document on</b></p> <p>22 <b>behalf of Quickie, is that right?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. And there is a handwritten date</b></p> <p>25 <b>of March 4, 2003.</b></p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 62</p> <p>1 A. Galloway</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 <b>Q. Did you write that date in?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And is that the date you signed</b></p> <p>7 <b>the document?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Do you know when this document</b></p> <p>10 <b>was submitted to the United States Patent</b></p> <p>11 <b>and Trademark Office?</b></p> <p>12 A. It looks like it was mailed on</p> <p>13 3/20/03.</p> <p>14 <b>Q. And you're looking at the</b></p> <p>15 <b>certificate of mailing on the last page of</b></p> <p>16 <b>the document, is that correct?</b></p> <p>17 A. Correct.</p> <p>18 <b>Q. Now, turning to the first page of</b></p> <p>19 <b>that document, do you see that the cover</b></p> <p>20 <b>letter says in the second paragraph "Also</b></p> <p>21 <b>enclosed is a copy of Power of</b></p> <p>22 <b>Attorney/Revocation of Prior Powers of</b></p> <p>23 <b>Attorney filed with the United States</b></p> <p>24 <b>Patent and Trademark Office on March 20,</b></p> <p>25 <b>2003 for your records."</b></p>	<p style="text-align: right;">Page 64</p> <p>1 A. Galloway</p> <p>2 names underneath that starting with Robert</p> <p>3 E. Krebs.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 <b>Q. Mr. Krebs was a partner at Thelen</b></p> <p>7 <b>Reid &amp; Priest, is that right?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Is it your understanding that all</b></p> <p>10 <b>of these other attorneys or getting the new</b></p> <p>11 <b>Power of Attorney were attorneys at Thelen</b></p> <p>12 <b>Reid &amp; Priest?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. And this is, as it says at the</b></p> <p>15 <b>top, a form in connection with Patent</b></p> <p>16 <b>Number 6,066,160.</b></p> <p>17 <b>Is that right?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. The passive knotless suture</b></p> <p>20 <b>terminator for use in minimally invasive</b></p> <p>21 <b>surgery and to facilitate standard tissue</b></p> <p>22 <b>securing, is that right?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. And that's the one that's at</b></p> <p>25 <b>issue in this lawsuit, is that right?</b></p>
<p style="text-align: right;">Page 63</p> <p>1 A. Galloway</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 <b>Q. Is that when you understand that</b></p> <p>5 <b>Thelen Reid &amp; Priest on behalf of Quickie</b></p> <p>6 <b>filed this document with the United States</b></p> <p>7 <b>Patent Office, that is the enclosed Power</b></p> <p>8 <b>of Attorney/Revocation of Prior Power Form?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. Now, turning to the Power of</b></p> <p>11 <b>Attorney/Revocation of Prior Powers Form,</b></p> <p>12 <b>do you see that the document says under the</b></p> <p>13 <b>heading Revocation of Prior Powers of</b></p> <p>14 <b>Attorney, "All Powers of Attorney</b></p> <p>15 <b>previously given are hereby revoked"?</b></p> <p>16 <b>Do you see that?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. And then it says, new Power of</b></p> <p>19 <b>Attorney, it says, "The following attorneys</b></p> <p>20 <b>or agents are hereby appointed to prosecute</b></p> <p>21 <b>and transact all business in the Patent and</b></p> <p>22 <b>Trademark Office connected therewith."</b></p> <p>23 <b>Do you see that?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. And then there are a number of</b></p>	<p style="text-align: right;">Page 65</p> <p>1 A. Galloway</p> <p>2 A. Yes.</p> <p>3 <b>Q. Now, do you also see that on the</b></p> <p>4 <b>second page of the form, the form has a</b></p> <p>5 <b>typed identity of the assignee of the</b></p> <p>6 <b>patent as Quickie, LLC? Do you see that on</b></p> <p>7 <b>the page that you signed right above your</b></p> <p>8 <b>signature?</b></p> <p>9 A. Yes, I see that.</p> <p>10 <b>Q. And it gives an address,</b></p> <p>11 <b>attention Alan Fell, is that right?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. Now, did you understand when you</b></p> <p>14 <b>signed this form that Quickie was revoking</b></p> <p>15 <b>any prior powers of attorney that had been</b></p> <p>16 <b>given to other attorneys in connection with</b></p> <p>17 <b>the '160 Patent?</b></p> <p>18 MR. DIAMOND: I'm sorry, could</p> <p>19 you read that back?</p> <p>20 (Whereupon, the requested portion</p> <p>21 was read back by the court reporter.)</p> <p>22 A. I understand that there was a</p> <p>23 revocation of the powers of attorney and</p> <p>24 all powers of attorney previously given are</p> <p>25 hereby revoked and new Power of Attorney</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 66</p> <p>1 A. Galloway</p> <p>2 for the following attorneys are appointed</p> <p>3 to prosecute and transact all business in</p> <p>4 the Patent and Trademark Office connected</p> <p>5 therein, as it says.</p> <p>6 <b>Q. And who typed in the names of the</b></p> <p>7 <b>new attorneys, that is the Thelen Reid &amp;</b></p> <p>8 <b>Priest attorneys? Do you know who typed</b></p> <p>9 <b>those names in?</b></p> <p>10 A. I don't know.</p> <p>11 <b>Q. Who prepared the form before it</b></p> <p>12 <b>was signed and submitted?</b></p> <p>13 A. I don't know.</p> <p>14 <b>Q. Who advised Quickle that it</b></p> <p>15 <b>should submit this form to the U.S. Patent</b></p> <p>16 <b>and Trademark Office?</b></p> <p>17 A. I believe that either Hal Berner</p> <p>18 or Robert Krebs from Thelen may have</p> <p>19 prepared the form, but I'm not sure, and</p> <p>20 that Alan Fell would have reviewed the form</p> <p>21 and advised us to sign it.</p> <p>22 <b>Q. And you did so, right?</b></p> <p>23 A. Correct.</p> <p>24 <b>Q. Are you aware that another copy</b></p> <p>25 <b>of this form was signed and submitted in</b></p>	<p style="text-align: right;">Page 68</p> <p>1 A. Galloway</p> <p>2 <b>Q. Do you see that on the last page</b></p> <p>3 <b>of that document there is a certificate of</b></p> <p>4 <b>transmission and a change of address form</b></p> <p>5 <b>again signed by people at Thelen Reid &amp;</b></p> <p>6 <b>Priest in December of 2003.</b></p> <p>7 <b>Do you see that?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Do you know why a second such</b></p> <p>10 <b>form was sent to the U.S. Patent and</b></p> <p>11 <b>Trademark Office?</b></p> <p>12 A. No, personally I don't.</p> <p>13 <b>Q. Now, looking at Exhibit 56 --</b></p> <p>14 MR. DIAMOND: Marty, it's not an</p> <p>15 objection and I don't want to</p> <p>16 interrupt your examination, but I do</p> <p>17 want to just note for the record that</p> <p>18 the two form are not identical and I</p> <p>19 just want to make sure there's not</p> <p>20 anything misleading here as if they</p> <p>21 are identical forms, the one filed in</p> <p>22 March versus the one that was filed in</p> <p>23 December.</p> <p>24 BY MR. KAMINSKY:</p> <p>25 <b>Q. I think what your counsel is</b></p>
<p style="text-align: right;">Page 67</p> <p>1 A. Galloway</p> <p>2 December of 2003?</p> <p>3 A. I don't recall.</p> <p>4 <b>Q. Let me correct myself.</b></p> <p>5 <b>Are you aware that another copy</b></p> <p>6 <b>of the form that you signed in March was</b></p> <p>7 <b>submitted again to the U.S. Patent and</b></p> <p>8 <b>Trademark Office in December 2003?</b></p> <p>9 A. I don't recall specifically.</p> <p>10 MR. KAMINSKY: Let me show you a</p> <p>11 document which we will mark Exhibit</p> <p>12 56.</p> <p>13 (Exhibit 56, Power of</p> <p>14 Attorney/Revocation of Prior Powers</p> <p>15 form, marked for identification, as of</p> <p>16 this date.)</p> <p>17 BY MR. KAMINSKY:</p> <p>18 <b>Q. This is another copy of the Power</b></p> <p>19 <b>of Attorney/Revocation of Prior Powers Form</b></p> <p>20 <b>with respect to the '160 Patent signed by</b></p> <p>21 <b>Dr. Galloway on March 4, 2003, which has</b></p> <p>22 <b>some other material on it.</b></p> <p>23 <b>Have you ever seen that document</b></p> <p>24 <b>before?</b></p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 69</p> <p>1 A. Galloway</p> <p>2 referring to is the fact that some of the</p> <p>3 names under the new Power of Attorney may</p> <p>4 be different.</p> <p>5 MR. KAMINSKY: Is that what</p> <p>6 you're thinking about, Mr. Diamond?</p> <p>7 MR. DIAMOND: No, there are a lot</p> <p>8 of differences. There is a control</p> <p>9 number that's different on the form in</p> <p>10 December. There is a different docket</p> <p>11 number at the top of the page from the</p> <p>12 other form.</p> <p>13 BY MR. KAMINSKY:</p> <p>14 <b>Q. Do you know why a second form was</b></p> <p>15 <b>filed, Dr. Galloway?</b></p> <p>16 A. No.</p> <p>17 <b>Q. Do you see that the date of your</b></p> <p>18 <b>signature is still March 4, 2003?</b></p> <p>19 A. Yes, I do see that.</p> <p>20 <b>Q. Do you remember signing more than</b></p> <p>21 <b>one form in March of 2003?</b></p> <p>22 A. I see from these -- no, I don't</p> <p>23 remember signing.</p> <p>24 MR. KAMINSKY: Let me show you a</p> <p>25 document which we will mark Exhibit</p>

19 (Pages 70 to 73)

<p style="text-align: right;">Page 70</p> <p>1 A. Galloway</p> <p>2 57.</p> <p>3 (Exhibit 57, Certificate of</p> <p>4 Transmission fax, marked for</p> <p>5 identification, as of this date.)</p> <p>6 BY MR. KAMINSKY:</p> <p>7 <b>Q. This is a fax cover page showing</b></p> <p>8 <b>the fax of a certificate of transmission</b></p> <p>9 <b>under 37 CFR 1.8, and it has a second page</b></p> <p>10 <b>which is dated December 5, 2003.</b></p> <p>11 <b>Have you ever seen that document</b></p> <p>12 <b>before?</b></p> <p>13 A. I don't recall that I have.</p> <p>14 <b>Q. Exhibit 57 lists on the second</b></p> <p>15 <b>page as the attorney Thelen Reid &amp; Priest,</b></p> <p>16 <b>Robert E. Krebs.</b></p> <p>17 <b>Is that who you understood at</b></p> <p>18 <b>that time was your counsel in connection</b></p> <p>19 <b>with the '160 Patent?</b></p> <p>20 A. I'm sorry, could you repeat that?</p> <p>21 <b>Q. Yes, I'll break it up for you.</b></p> <p>22 <b>Looking at the second page of</b></p> <p>23 <b>Exhibit 57, do you see that at the bottom</b></p> <p>24 <b>of the page it has a change of address</b></p> <p>25 <b>notice, and that is signed by Thelen Reid &amp;</b></p>	<p style="text-align: right;">Page 72</p> <p>1 A. Galloway</p> <p>2 statement that says that the authority of</p> <p>3 Thelen Reid &amp; Priest in connection with the</p> <p>4 '160 Patent is limited in any way.</p> <p>5 MR. DIAMOND: Objection to form.</p> <p>6 A. If you're asking me that there is</p> <p>7 a statement that says we are limiting the</p> <p>8 authority of Krebs or the attorneys at</p> <p>9 Thelen Reid, I do not see that on those two</p> <p>10 exhibits.</p> <p>11 <b>Q. Now, who did you deal with in</b></p> <p>12 <b>connection with the -- strike that.</b></p> <p>13 <b>At a certain point in time,</b></p> <p>14 <b>Thelen Reid &amp; Priest was replaced as</b></p> <p>15 <b>counsel for Quickie in connection with the</b></p> <p>16 <b>'160 Patent, is that correct?</b></p> <p>17 A. Not completely correct.</p> <p>18 <b>Q. Is it not correct that all</b></p> <p>19 <b>matters related to the Quickie were</b></p> <p>20 <b>transferred from Thelen Reid &amp; Priest to</b></p> <p>21 <b>another law firm that Mark Evens joined in</b></p> <p>22 <b>2006?</b></p> <p>23 A. No.</p> <p>24 MR. DIAMOND: Objection to form.</p> <p>25 MR. KAMINSKY: Let me show you a</p>
<p style="text-align: right;">Page 71</p> <p>1 A. Galloway</p> <p>2 Priest, Robert E. Krebs, registration</p> <p>3 number 25,885 and there is a handwritten</p> <p>4 date of December 2, 2003.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 <b>Q. Was Mr. Krebs your attorney in</b></p> <p>8 <b>connection with the '160 Patent at the time</b></p> <p>9 <b>that this form was filed?</b></p> <p>10 MR. DIAMOND: Objection to form.</p> <p>11 A. Well, Mr. Krebs was our attorney</p> <p>12 related to the re-examination of the patent</p> <p>13 and to all litigating matters related to</p> <p>14 the patent.</p> <p>15 <b>Q. Do either of these forms, look at</b></p> <p>16 <b>Exhibits 51 and 56, provide any limitation</b></p> <p>17 <b>of the authority of Mr. Krebs and the</b></p> <p>18 <b>Thelen Reid &amp; Priest firm in connection</b></p> <p>19 <b>with their authority as to the '160 Patent?</b></p> <p>20 MR. DIAMOND: Objection to form.</p> <p>21 A. Which documents are you referring</p> <p>22 to?</p> <p>23 <b>Q. Look at Exhibit 51 and look at</b></p> <p>24 <b>Exhibit 56 and look at 57 as well and tell</b></p> <p>25 <b>me if you see in any of those documents any</b></p>	<p style="text-align: right;">Page 73</p> <p>1 A. Galloway</p> <p>2 document which we will mark Exhibit</p> <p>3 58.</p> <p>4 (Exhibit 58, Letter, marked for</p> <p>5 identification, as of this date.)</p> <p>6 BY MR. KAMINSKY:</p> <p>7 <b>Q. Exhibit 58 is a letter from</b></p> <p>8 <b>Aubrey Galloway to Thelen Reid &amp; Priest</b></p> <p>9 <b>dated August 14, 2006.</b></p> <p>10 <b>Have you ever seen that document</b></p> <p>11 <b>before?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. Is that your signature?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. And this is a letter you wrote to</b></p> <p>16 <b>Thelen Reid &amp; Priest in August of 2006, is</b></p> <p>17 <b>that right?</b></p> <p>18 A. Correct.</p> <p>19 <b>Q. And do you see that the letter</b></p> <p>20 <b>says to Thelen Reid &amp; Priest:</b></p> <p>21 <b>"Responsibility for all matters</b></p> <p>22 <b>relating to Quickie, LLC are to be</b></p> <p>23 <b>transferred to Sterne, S-T-E-R-N-E,</b></p> <p>24 <b>Kessler, K-E-S-S-L-E-R, Goldstein and Fox,</b></p> <p>25 <b>PLLC. Therefore, please forward all</b></p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 74</p> <p>1 A. Galloway</p> <p>2 related files and future correspondence to</p> <p>3 the attention of Mark Evens, E-V-E-N-S, at</p> <p>4 the address listed below."</p> <p>5 And then it lists Mr. Evens' name</p> <p>6 and address.</p> <p>7 Do you see that?</p> <p>8 A. Yes, I see that.</p> <p>9 <b>Q. Does that refresh your</b></p> <p>10 <b>recollection that all matters relating to</b></p> <p>11 <b>Quickie that Thelen Reid &amp; Priest had been</b></p> <p>12 <b>handling were transferred to Mark Evens'</b></p> <p>13 <b>new firm when he left Thelen Reid &amp; Priest</b></p> <p>14 <b>in 2006?</b></p> <p>15 MR. DIAMOND: Objection to form.</p> <p>16 Misleading.</p> <p>17 A. This letter says, dated in August</p> <p>18 2006, that in August 2006 we were</p> <p>19 transferring all matters related to Quickie</p> <p>20 to Sterne, Kessler, Goldstein and Fox and</p> <p>21 requested that Thelen Reid attorneys</p> <p>22 forward all information to them at that</p> <p>23 time.</p> <p>24 <b>Q. Why did you direct them to do</b></p> <p>25 <b>that? Were you finished with your answer?</b></p>	<p style="text-align: right;">Page 76</p> <p>1 A. Galloway</p> <p>2 had been abandoned or deemed abandoned by</p> <p>3 the Patent Office, whatever the correct</p> <p>4 terminology is, from the Patent Office?</p> <p>5 A. I believe that's the correct time</p> <p>6 period.</p> <p>7 <b>Q. Is that why you replaced Thelen</b></p> <p>8 <b>Reid &amp; Priest, because the abandonment of</b></p> <p>9 <b>the patent?</b></p> <p>10 MR. DIAMOND: Objection to form.</p> <p>11 A. That may have been one of the</p> <p>12 reasons. Another reason -- I don't recall</p> <p>13 our entire thought processes, but again, I</p> <p>14 think we had a lot of confidence in Mark</p> <p>15 Evens as an attorney and as he changed the</p> <p>16 firms, we had confidence to deal with them.</p> <p>17 <b>Q. Now, shortly after that, you</b></p> <p>18 <b>hired Maier &amp; Maier to petition to</b></p> <p>19 <b>reinstate the '160 Patent, correct?</b></p> <p>20 A. I don't recall the exact</p> <p>21 timetable.</p> <p>22 <b>Q. Let me show you Exhibit 55 again.</b></p> <p>23 <b>Does that refresh your</b></p> <p>24 <b>recollection, looking at the third page of</b></p> <p>25 <b>that document, that it was in October 2006</b></p>
<p style="text-align: right;">Page 75</p> <p>1 A. Galloway</p> <p>2 I didn't mean to interrupt you.</p> <p>3 A. I don't think that was the</p> <p>4 question you asked me before.</p> <p>5 <b>Q. What were you doing by this</b></p> <p>6 <b>letter?</b></p> <p>7 A. At this point I have to recall</p> <p>8 where we were with the -- I mean, what I</p> <p>9 recall is that we were giving powers of</p> <p>10 attorney and the matters related to Quickie</p> <p>11 with our own going patent and/or</p> <p>12 infringement cases to Mark Evens and Sterne</p> <p>13 Kessler Goldstein and Fox.</p> <p>14 <b>Q. You were essentially replacing</b></p> <p>15 <b>Thelen Reid &amp; Priest with Mark Evens' new</b></p> <p>16 <b>firm, isn't that correct?</b></p> <p>17 A. Correct.</p> <p>18 <b>Q. As your counsel in connection</b></p> <p>19 <b>with your patent matters?</b></p> <p>20 A. That's what I believe we were</p> <p>21 doing at that point, yes.</p> <p>22 <b>Q. Yes.</b></p> <p>23 <b>And that's shortly after you have</b></p> <p>24 <b>learned as we've showed before that the</b></p> <p>25 <b>'160 Patent has expired, is that right, or</b></p>	<p style="text-align: right;">Page 77</p> <p>1 A. Galloway</p> <p>2 that you gave a Power of Attorney to the</p> <p>3 Maier &amp; Maier firm to petition to reinstate</p> <p>4 the '160 Patent?</p> <p>5 A. Yes, that's what this says.</p> <p>6 <b>Q. Now, you personally signed a</b></p> <p>7 <b>statement in support of that petition,</b></p> <p>8 <b>didn't you?</b></p> <p>9 A. I don't recall.</p> <p>10 <b>Q. Let me show you a document which</b></p> <p>11 <b>we've marked Exhibit 53 in a previous</b></p> <p>12 <b>deposition. It is a statement in support</b></p> <p>13 <b>of petition under 37 CFR Section 1.378(c)</b></p> <p>14 <b>which appears to bear the signature on the</b></p> <p>15 <b>second page Aubrey C. Galloway and the</b></p> <p>16 <b>handwritten date of October 27, 2006.</b></p> <p>17 <b>Is that your signature on the</b></p> <p>18 <b>second page?</b></p> <p>19 A. No.</p> <p>20 <b>Q. Whose signature is that?</b></p> <p>21 A. Well, I recall this circumstance.</p> <p>22 You can look at the other signatures, it's</p> <p>23 clearly not the same signature.</p> <p>24 At the time that the patent was,</p> <p>25 we found out that patent was not, had not</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 78</p> <p>1 A. Galloway 2 continued because of lack of payment, we 3 shortly thereafter hired or retained Maier 4 &amp; Maier to have Power of Attorney to 5 attempt to get that reinstated and granted 6 them Power of Attorney as you showed me in 7 Exhibit 55. 8 I recall that they were under 9 some pressure to go to the Patent Office 10 and wanted to walk through a petition to 11 reinstate and that they would fax something 12 up to my office or send something up to my 13 office to give them that authority. 14 I recall that I was going to be 15 in the operating room, or I was in the 16 operating room, I operate every day, and I 17 believe this exhibit came up, it was signed 18 by someone in my office and then sent back 19 to them due to the matter of what was 20 related to me to be an urgency of 21 turnaround. 22 <b>Q. Did you authorize someone to sign</b> 23 <b>on your behalf?</b> 24 A. Yes, I would have spoken promptly 25 to Maier &amp; Maier and authorized someone in</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Galloway 2 there's a difference in who has got 3 which copies, but we'll stipulate that 4 it says what it says. 5 Also, for the record, we'll be 6 supplementing, because when these were 7 submitted and filed, we did not know 8 either as to the testimony that 9 Dr. Galloway has now given. 10 <b>Q. Dr. Galloway, are you telling us</b> 11 <b>you told someone in your office they could</b> 12 <b>sign a document without your having first</b> 13 <b>read it?</b> 14 A. Yeah. 15 <b>Q. And you never read that document</b> 16 <b>again after that until just before this</b> 17 <b>deposition?</b> 18 A. That's correct. 19 <b>Q. Is that what you're telling us?</b> 20 <b>Did you ever read the materials</b> 21 <b>that Maier &amp; Maier submitted on your behalf</b> 22 <b>in this lawsuit?</b> 23 A. I subsequently read other 24 materials that Maier &amp; Maier submitted on 25 our behalf, I think, several months beyond</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Galloway 2 my office to sign on my behalf. 3 <b>Q. So you stand by that signature as</b> 4 <b>if it were your own signature, is that</b> 5 <b>correct?</b> 6 A. I stand by that I authorized 7 someone to sign this, but I actually didn't 8 see this until a couple of weeks ago. 9 <b>Q. In this action we served requests</b> 10 <b>to admit upon Quickie, and in response to</b> 11 <b>the request to admit, a clean copy of which</b> 12 <b>we will mark Exhibit 58, we asked for an</b> 13 <b>admission on the following item, number 24</b> 14 <b>and got the following response:</b> 15 <b>Exhibit D, this is number 24,</b> 16 <b>"Hereto is a true and correct copy of the</b> 17 <b>statement in support of petition dated</b> 18 <b>October 27, 2006 signed by Aubrey Galloway</b> 19 <b>as the managing partner of Quickie which</b> 20 <b>was filed with PTO in 2006 (the statement</b> 21 <b>in support)."</b> 22 <b>The response is admit. Do you</b> 23 <b>see that.</b> 24 A. Yes, I see that. 25 MR. DIAMOND: I understand</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Galloway 2 this letter that I think fully outlined the 3 reasons that we thought the patent should 4 not have lapsed, and I think that was 5 submitted several months after that to a 6 much more extensive document to the Patent 7 Office, around March or something like 8 that. 9 <b>Q. Were you aware at the time you</b> 10 <b>authorized someone to sign this document</b> 11 <b>that the statements that were going to be</b> 12 <b>made were being made under the penalties of</b> 13 <b>perjury?</b> 14 A. I probably was, yes. 15 <b>Q. Okay.</b> 16 <b>Have you ever notified the Patent</b> 17 <b>and Trademark Office that any statement in</b> 18 <b>Exhibit 53 is false and incorrect?</b> 19 MR. DIAMOND: Objection to form. 20 A. Well, I think, again, the 21 Maier -- 22 <b>Q. I'm going to restate the question</b> 23 <b>because I don't want to have an objection</b> 24 <b>here.</b> 25 <b>Have you ever notified the United</b></p>



22 (Pages 82 to 85)

<p style="text-align: right;">Page 82</p> <p>1 A. Galloway</p> <p>2 States Patent and Trademark Office that any</p> <p>3 statement in Exhibit 53, the statement</p> <p>4 signed for you under your name, was</p> <p>5 incorrect?</p> <p>6 A. Our attorneys Maier &amp; Maier</p> <p>7 notified the Patent Office of a more</p> <p>8 extensive clarification of that statement</p> <p>9 which was not incorrect, but was</p> <p>10 incomplete.</p> <p>11 <b>Q. Did you ever tell the Patent</b></p> <p>12 <b>Office that there were incorrect statements</b></p> <p>13 <b>in your statement?</b></p> <p>14 MR. DIAMOND: Objection to form.</p> <p>15 A. Are you asking me personally?</p> <p>16 <b>Q. Well, I'll start with you</b></p> <p>17 <b>personally.</b></p> <p>18 <b>Did you personally ever do that?</b></p> <p>19 A. No.</p> <p>20 <b>Q. Has anyone on your behalf filed a</b></p> <p>21 <b>statement by you under penalty of perjury</b></p> <p>22 <b>saying that the prior statement you gave to</b></p> <p>23 <b>the Patent Office was incorrect in any way?</b></p> <p>24 MR. DIAMOND: Objection to form.</p> <p>25 A. I don't think it was incorrect.</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Galloway</p> <p>2 <b>Q. When did you retain Mr. Krebs to</b></p> <p>3 <b>do that?</b></p> <p>4 A. I don't recall the specific date.</p> <p>5 <b>Q. Is that at the time that the</b></p> <p>6 <b>Power of Attorney revocation of Power of</b></p> <p>7 <b>Attorney form that we showed you before</b></p> <p>8 <b>that's included in Exhibit 51 was submitted</b></p> <p>9 <b>to the United States Patent and Trademark</b></p> <p>10 <b>Office?</b></p> <p>11 A. I think that would be correct.</p> <p>12 <b>Q. Now, there is a second statement</b></p> <p>13 <b>in paragraph 3 that says:</b></p> <p>14 <b>"As managing partner of Quickie,</b></p> <p>15 <b>LLC, I retained the law firm of Thelen Reid</b></p> <p>16 <b>&amp; Priest to concurrently conduct litigation</b></p> <p>17 <b>services for Quickie, LLC."</b></p> <p>18 <b>Is that statement correct?</b></p> <p>19 A. Yes, I believe it is.</p> <p>20 <b>Q. And is that referring to the</b></p> <p>21 <b>Medtronic case?</b></p> <p>22 A. I believe that's correct.</p> <p>23 <b>Q. Are you aware of any other</b></p> <p>24 <b>litigation on behalf of Quickie that the</b></p> <p>25 <b>Thelen Reid &amp; Priest firm signed -- strike</b></p>
<p style="text-align: right;">Page 83</p> <p>1 A. Galloway</p> <p>2 <b>Q. Okay.</b></p> <p>3 A. It was incomplete.</p> <p>4 <b>Q. Okay.</b></p> <p>5 <b>But you don't think it was</b></p> <p>6 <b>incorrect, is that right?</b></p> <p>7 A. I don't think it was incorrect.</p> <p>8 I think it was incomplete.</p> <p>9 <b>Q. All right.</b></p> <p>10 <b>Now, let me read you a statement</b></p> <p>11 <b>in the statement submitted under your</b></p> <p>12 <b>signature, or over your signature.</b></p> <p>13 <b>Paragraph 2 says: "As the</b></p> <p>14 <b>managing partner for Quickie, LLC, I</b></p> <p>15 <b>retained Robert E. Krebs, et al. of the</b></p> <p>16 <b>Thelen Reid &amp; Priest, LLP law firm to</b></p> <p>17 <b>transact all post-issuance proceedings and</b></p> <p>18 <b>responsibilities in the Patent and</b></p> <p>19 <b>Trademark Office, including but not limited</b></p> <p>20 <b>to re-examination proceedings and timely</b></p> <p>21 <b>payment of the maintenance fee."</b></p> <p>22 <b>Do you see that?</b></p> <p>23 A. Yes, I do.</p> <p>24 <b>Q. Is that statement correct?</b></p> <p>25 A. I think it is correct.</p>	<p style="text-align: right;">Page 85</p> <p>1 A. Galloway</p> <p>2 that.</p> <p>3 Are you aware of any other</p> <p>4 litigation on behalf of Quickie in which</p> <p>5 the Thelen Reid &amp; Priest firm acted as</p> <p>6 your, as Quickie's counsel?</p> <p>7 A. No.</p> <p>8 <b>Q. Did you read any of the other</b></p> <p>9 <b>documents at the time that were submitted</b></p> <p>10 <b>by the Maier &amp; Maier firm in connection</b></p> <p>11 <b>with the petition to reinstate the '160</b></p> <p>12 <b>Patent?</b></p> <p>13 MR. DIAMOND: Objection to form.</p> <p>14 It's a little broad.</p> <p>15 A. Can I proceed with clarification?</p> <p>16 <b>Q. Sure.</b></p> <p>17 A. Did I read at the time that the</p> <p>18 documents were being submitted? Did I read</p> <p>19 them at that time?</p> <p>20 <b>Q. Yes.</b></p> <p>21 A. No.</p> <p>22 <b>Q. Did you ever read them after</b></p> <p>23 <b>that?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. When did you read them after they</b></p>



23 (Pages 86 to 89)

<p style="text-align: right;">Page 86</p> <p>1 A. Galloway 2 were first submitted to the Patent Office? 3 MR. DIAMOND: Same objection. 4 I'm not quite sure what documents 5 we're talking about here. 6 MR. KAMINSKY: Okay. Well, I'll 7 show specific documents to the witness 8 in a moment, and if I miss one, I'm 9 not trying to trap you. That's not 10 the intention. 11 BY MR. KAMINSKY: 12 <b>Q. Do you remember when you</b> 13 <b>first read any of the documents that</b> 14 <b>were being submitted to or had been</b> 15 <b>submitted to the Patent Office on</b> 16 <b>behalf of Quickie in connection with</b> 17 <b>a petition to reinstate the patent?</b> 18 A. I don't remember exactly when. 19 <b>Q. Okay.</b> 20 <b>Let me show you a document which</b> 21 <b>we've marked Exhibit 52.</b> 22 <b>Exhibit 52 is a statement in</b> 23 <b>support of petition under 37 CFR 1.37(b)</b> 24 <b>signed by Todd S Sharinn dated November 20,</b> 25 <b>2006.</b></p>	<p style="text-align: right;">Page 88</p> <p>1 A. Galloway 2 of Quickie ever filing a paper or other 3 statement by Todd Sharinn ever retracting 4 this statement? 5 A. Well, I'm going to read this 6 statement, if I may, that he certified that 7 the fee indication form in October 2002 8 certified and the forms was mailed to the 9 Patent Office on October 22nd and that the 10 PTO change of address form indicating Pepe 11 &amp; Hazard was superseded. 12 That change of address form to my 13 understanding he sent to Greenberg and 14 remained at Greenberg and still remains at 15 Greenberg, if it exists. 16 He states, therefore, that his 17 responsibility, including the payment of 18 any maintenance fees, was therefore not due 19 because we revoked Power of Attorney, which 20 is clearly not true, because we continued 21 to employ Greenberg for the following year, 22 year and a half, related to Quickie, 23 related to additional patents with Quickie 24 that we subsequently got, related to 25 maintenance of this patent, and relating to</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Galloway 2 Have you ever seen that document 3 before? 4 A. Yes, I have. 5 <b>Q. When did you first see that</b> 6 <b>document?</b> 7 A. Probably approximately two weeks 8 ago. 9 <b>Q. In paragraph 2 of that document,</b> 10 <b>Mr. Sharinn states:</b> 11 <b>"My responsibility, including the</b> 12 <b>payment of any maintenance fee that may</b> 13 <b>become due, for the subject patent ended</b> 14 <b>prior to the date where the payment of a</b> 15 <b>first maintenance fee, was due as evidenced</b> 16 <b>by the enclosed revocation of prior powers</b> 17 <b>of attorney signed on behalf of Quickie,</b> 18 <b>LLC on March 4, 2003 wherein 'all prior</b> 19 <b>powers of attorney previously given (were)</b> 20 <b>hereby revoked."</b> 21 <b>Do you see that statement?</b> 22 A. Yes, I do. 23 <b>Q. Is that statement correct?</b> 24 A. No. 25 <b>Q. Are you aware of anyone on behalf</b></p>	<p style="text-align: right;">Page 89</p> <p>1 A. Galloway 2 several other intellectual properties with 3 Quickie, and we paid them a hell of a lot 4 of money over that time, several hundred 5 thousand dollars. 6 So for him to make that statement 7 is completely God damn false -- excuse my 8 language. But it's a misconception or a 9 misinterpretation of our entire business 10 relationship with him. 11 <b>Q. Have you ever filed a statement</b> 12 <b>by you with the Patent Office, the Patent</b> 13 <b>and Trademark Office, saying what you just</b> 14 <b>said?</b> 15 A. No. 16 <b>Q. Are you aware of anybody filing a</b> 17 <b>statement by Mr. Sharinn saying that when I</b> 18 <b>made this statement under penalty of</b> 19 <b>perjury this statement was false?</b> 20 A. It's incomplete. It's 21 incomplete. 22 <b>Q. Are you aware of anybody filing</b> 23 <b>any statement for Mr. Sharinn contradicting</b> 24 <b>this statement at any time?</b> 25 A. I'm not aware, no.</p>

24 (Pages 90 to 93)

<p style="text-align: right;">Page 90</p> <p>1 A. Galloway</p> <p>2 <b>Q. Are you aware of anybody going to</b></p> <p>3 <b>Mr. Sharinn at any time and saying to</b></p> <p>4 <b>Mr. Sharinn, Mr. Sharinn, you filed this</b></p> <p>5 <b>statement on our behalf, we do not think it</b></p> <p>6 <b>is correct, we want you to file a different</b></p> <p>7 <b>statement?</b></p> <p>8 <b>Are you aware of that ever</b></p> <p>9 <b>happening?</b></p> <p>10 A. As I told you, I just saw this</p> <p>11 statement two weeks ago.</p> <p>12 <b>Q. So you're not aware of that</b></p> <p>13 <b>happening?</b></p> <p>14 A. That's correct.</p> <p>15 <b>Q. Okay.</b></p> <p>16 <b>Now, are you aware that Maier &amp;</b></p> <p>17 <b>Maier drafted this statement for</b></p> <p>18 <b>Mr. Sharinn to sign and went over it with</b></p> <p>19 <b>him before it was signed?</b></p> <p>20 A. No, I'm not.</p> <p>21 <b>Q. Do you see that below</b></p> <p>22 <b>Mr. Sharinn's signature and the date, the</b></p> <p>23 <b>statement says care of Maier &amp; Maier, PLLC,</b></p> <p>24 <b>and has their address, do you see that?</b></p> <p>25 A. I do see that, and I see that and</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Galloway</p> <p>2 Office which dismisses, in other words</p> <p>3 denies, the petition by Quickie to</p> <p>4 reinstate the patent.</p> <p>5 Have you ever seen that document</p> <p>6 before? It's dated, by the way, March 6,</p> <p>7 2007.</p> <p>8 A. Yes, I believe I've seen it.</p> <p>9 <b>Q. Now, would you look at page 4 of</b></p> <p>10 <b>that statement, of that decision.</b></p> <p>11 A. Okay.</p> <p>12 <b>Q. Do you see the final paragraph,</b></p> <p>13 <b>before the conclusion, it says:</b></p> <p>14 <b>"Finally, the petition states</b></p> <p>15 <b>that on March 4, 2003 attorney Todd Sharinn</b></p> <p>16 <b>was responsible for the patent until March</b></p> <p>17 <b>4, 2003. Subsequently, on December 5,</b></p> <p>18 <b>2003, patentee filed a change of attorney</b></p> <p>19 <b>docket and change of address notice</b></p> <p>20 <b>changing the correspondence address to that</b></p> <p>21 <b>of Thelen Reid. Patentee has failed to</b></p> <p>22 <b>account for the period between March 4,</b></p> <p>23 <b>2003 when Sharinn's responsibility for the</b></p> <p>24 <b>patent terminated in December 5, 2003 when</b></p> <p>25 <b>the patentee filed a change of attorney</b></p>
<p style="text-align: right;">Page 91</p> <p>1 A. Galloway</p> <p>2 again, if I recall my dates, that was in</p> <p>3 November 2006, and I recall that Maier &amp;</p> <p>4 Maier submitted a statement to the Patent</p> <p>5 Office several months after that that</p> <p>6 clarified and expanded our understanding of</p> <p>7 this statement.</p> <p>8 <b>Q. Are you aware that in denying</b></p> <p>9 <b>your application, the U.S. Patent and</b></p> <p>10 <b>Trademark Office relied, among other</b></p> <p>11 <b>things, on this very statement that was</b></p> <p>12 <b>submitted by your counsel, Quickie's</b></p> <p>13 <b>counsel, to the U.S. Patent and Trademark</b></p> <p>14 <b>Office?</b></p> <p>15 MR. DIAMOND: Object to the form.</p> <p>16 A. I don't know whether that's true</p> <p>17 or not, and I'm not aware of how they make</p> <p>18 their decision.</p> <p>19 <b>Q. Let me show you a document which</b></p> <p>20 <b>we'll mark Exhibit 59.</b></p> <p>21 <b>(Exhibit 59, Decision, marked for</b></p> <p>22 <b>identification, as of this date.)</b></p> <p>23 <b>BY MR. KAMINSKY:</b></p> <p>24 <b>Q. Exhibit 59 is a decision on</b></p> <p>25 <b>petition by the U.S. Patent and Trademark</b></p>	<p style="text-align: right;">Page 93</p> <p>1 A. Galloway</p> <p>2 docket number and change of address</p> <p>3 notice."</p> <p>4 Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 <b>Q. Do you see Mr. Sharinn's</b></p> <p>7 <b>statement earlier, it says that his</b></p> <p>8 <b>authority was revoked, or his</b></p> <p>9 <b>responsibility ended with the revocation of</b></p> <p>10 <b>powers, prior powers of attorney signed on</b></p> <p>11 <b>behalf of Quickie on March 4, 2003.</b></p> <p>12 <b>Do you see that?</b></p> <p>13 A. Are you referring to Exhibit 52?</p> <p>14 <b>Q. Yes.</b></p> <p>15 A. Yes, I do see that.</p> <p>16 <b>Q. Now, would you look again at</b></p> <p>17 <b>Exhibit 51, that's the letter that you</b></p> <p>18 <b>signed -- that's the letter that contains</b></p> <p>19 <b>the form, the March 2003 -- it's the letter</b></p> <p>20 <b>from Thelen Reid &amp; Priest to Quickie</b></p> <p>21 <b>attaching the form that was filed with the</b></p> <p>22 <b>Patent Office in March -- do you see that</b></p> <p>23 <b>that's form you signed on March 4, 2003?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. That's the form that Mr. Sharinn</b></p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 94</p> <p>1 A. Galloway</p> <p>2 is referring to, isn't it?</p> <p>3 MR. DIAMOND: Objection to form.</p> <p>4 A. I don't know what he's referring</p> <p>5 to, but he may be referring to that. He's</p> <p>6 referring to a Power of Attorney, and I</p> <p>7 think this was the Power of Attorney form,</p> <p>8 so it probably was.</p> <p>9 <b>Q. A Power of Attorney dated March</b></p> <p>10 <b>4, 2003?</b></p> <p>11 A. Correct.</p> <p>12 <b>Q. That's what he says?</b></p> <p>13 A. Correct.</p> <p>14 <b>Q. Are you aware of any other such</b></p> <p>15 <b>form dated March 4, 2003 that Quickie ever</b></p> <p>16 <b>signed?</b></p> <p>17 A. No.</p> <p>18 MR. DIAMOND: Objection to form.</p> <p>19 Other than the one we've already</p> <p>20 discussed today?</p> <p>21 MR. KAMINSKY: Yes.</p> <p>22 MR. DIAMOND: There were two.</p> <p>23 MR. KAMINSKY: I think I said</p> <p>24 it -- yes, okay.</p> <p>25 BY MR. KAMINSKY:</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Galloway</p> <p>2 reviewed it in detail or read it in detail,</p> <p>3 but I do recall that we were making an</p> <p>4 amendment or a clarification to a filing</p> <p>5 with the PPO at this time that this</p> <p>6 document was going out, but I don't recall</p> <p>7 that I read it in detail.</p> <p>8 <b>Q. When do you think you first read</b></p> <p>9 <b>it?</b></p> <p>10 A. In detail, I probably first read</p> <p>11 it approximately two weeks ago.</p> <p>12 <b>Q. Now, are you aware of anyone ever</b></p> <p>13 <b>filing a statement with the Patent Office</b></p> <p>14 <b>on behalf of Quickie saying that anything</b></p> <p>15 <b>in this supplemented petition, which we've</b></p> <p>16 <b>marked as Exhibit 54, is inaccurate?</b></p> <p>17 A. I'm not aware of it.</p> <p>18 <b>Q. When you read it, did you</b></p> <p>19 <b>determine that anything in the statement</b></p> <p>20 <b>was inaccurate?</b></p> <p>21 A. No, not that I recall.</p> <p>22 <b>Q. And that was two weeks ago,</b></p> <p>23 <b>correct?</b></p> <p>24 A. Correct.</p> <p>25 <b>Q. Now, let's look on the first page</b></p>
<p style="text-align: right;">Page 95</p> <p>1 A. Galloway</p> <p>2 <b>Q. With your counsel's correction,</b></p> <p>3 <b>there were actually two of those forms</b></p> <p>4 <b>signed on March 4, 2003, both of which</b></p> <p>5 <b>revoked the prior Powers of Attorney and</b></p> <p>6 <b>appointed Thelen Reid &amp; Priest and various</b></p> <p>7 <b>attorneys there as Quickie's counsel,</b></p> <p>8 <b>correct?</b></p> <p>9 A. Correct.</p> <p>10 <b>Q. And are you aware of any other</b></p> <p>11 <b>form besides those two that was signed at</b></p> <p>12 <b>that time?</b></p> <p>13 A. I'm not aware of any.</p> <p>14 <b>Q. Let me show you Exhibit 54.</b></p> <p>15 <b>Exhibit 54 is a supplement to petition</b></p> <p>16 <b>under 37 CFR Section 1.378(b) dated</b></p> <p>17 <b>December 4, 2006 and signed by Mr. Maier on</b></p> <p>18 <b>behalf of Quickie. He actually dated it</b></p> <p>19 <b>December 1st, but the file stamp from the</b></p> <p>20 <b>Patent Office says December 4th.</b></p> <p>21 <b>Do you see that?</b></p> <p>22 A. Yes, I do.</p> <p>23 <b>Q. When was the first time you ever</b></p> <p>24 <b>saw this document?</b></p> <p>25 A. I don't remember whether I</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Galloway</p> <p>2 of the document in the third paragraph, and</p> <p>3 it says:</p> <p>4 "A declaration by Todd Sharinn is</p> <p>5 being added to Exhibit 7 showing that he</p> <p>6 was an attorney at Pepe &amp; Hazard, LLP and</p> <p>7 was responsible for the '160 Patent. Later</p> <p>8 he left Pepe &amp; Hazard, but continued to be</p> <p>9 responsible for the '160 Patent as an</p> <p>10 attorney at Greenberg Traurig (Exhibit 8).</p> <p>11 "Further, his responsibility for</p> <p>12 the '160 Patent ended prior to the time</p> <p>13 period when payment of a first maintenance</p> <p>14 fee was due) see Exhibits 3 and 10,</p> <p>15 revocation of prior powers of attorney</p> <p>16 signed on behalf of the patent owner on</p> <p>17 March 4, 2003)."</p> <p>18 Are you aware of anyone on behalf</p> <p>19 of Quickie ever advising the Patent Office</p> <p>20 that this statement made to the Patent</p> <p>21 Office in December 2006 was false?</p> <p>22 MR. DIAMOND: Objection to form.</p> <p>23 A. I'm not aware of anyone making</p> <p>24 that statement to me.</p> <p>25 <b>Q. Are you aware of anyone advising</b></p>

26 (Pages 98 to 101)

<p style="text-align: right;">Page 98</p> <p>1 A. Galloway</p> <p>2 the Patent Office that this statement was</p> <p>3 inaccurate in any way?</p> <p>4 A. No.</p> <p>5 <b>Q. Now, continuing on, on page 2 --</b></p> <p>6 <b>at the bottom of page 2 in the last</b></p> <p>7 <b>paragraph that carries over to page 3, the</b></p> <p>8 <b>statement says:</b></p> <p>9 <b>"Thelen Reid &amp; Priest was granted</b></p> <p>10 <b>and held sole and full power in the '160</b></p> <p>11 <b>Patent from March 4, 2003 through August</b></p> <p>12 <b>14, 2006 (Exhibits 3, 9 and 10). This</b></p> <p>13 <b>period of time covered the time period up</b></p> <p>14 <b>until May 23, 2004 for timely paying the</b></p> <p>15 <b>first maintenance fee and the entire 2-year</b></p> <p>16 <b>time period starting from the date of the</b></p> <p>17 <b>'160 Patent's expiration to file a remedial</b></p> <p>18 <b>petition under the unintentional provision</b></p> <p>19 <b>(37 CFR 1.37(c)); this 2-year expiration</b></p> <p>20 <b>period ending on May 24, 2006."</b></p> <p>21 <b>Do you see that statement?</b></p> <p>22 A. Yes, I do.</p> <p>23 <b>Q. Has anyone on behalf of Quickie</b></p> <p>24 <b>ever advised the U.S. Patent Office that</b></p> <p>25 <b>this statement that had been made to the</b></p>	<p style="text-align: right;">Page 100</p> <p>1 A. Galloway</p> <p>2 of Quickie ever advising the U.S. Patent</p> <p>3 Office that that statement was false?</p> <p>4 A. No.</p> <p>5 <b>Q. Are you aware of anyone on behalf</b></p> <p>6 <b>of Quickie ever advising the U.S. Patent</b></p> <p>7 <b>and Trademark Office that that statement</b></p> <p>8 <b>was inaccurate in any way?</b></p> <p>9 A. I seem to remember that there was</p> <p>10 further correspondence with, from Maier to</p> <p>11 the Patent Office, but I don't recall</p> <p>12 exactly the specifics of that</p> <p>13 correspondence.</p> <p>14 <b>Q. So you're not aware, as you sit</b></p> <p>15 <b>here, you personally are not aware of</b></p> <p>16 <b>anyone advising the U.S. Patent and</b></p> <p>17 <b>Trademark Office that the particular</b></p> <p>18 <b>statement I read to you was inaccurate?</b></p> <p>19 MR. DIAMOND: Objection to form.</p> <p>20 I think it mischaracterizes his</p> <p>21 testimony.</p> <p>22 A. Again, all I can say is I believe</p> <p>23 that there was a follow-up document to the</p> <p>24 Patent Office from Maier which may have</p> <p>25 further clarified this. Whether that</p>
<p style="text-align: right;">Page 99</p> <p>1 A. Galloway</p> <p>2 U.S. Patent Office was false?</p> <p>3 MR. DIAMOND: Objection to form.</p> <p>4 Misleading.</p> <p>5 A. I don't know if we've had any</p> <p>6 correspondence with the Patent Office on</p> <p>7 this or not. I'm not aware if we have.</p> <p>8 <b>Q. Are you aware of anyone on behalf</b></p> <p>9 <b>of Quickie advising the U.S. Patent Office</b></p> <p>10 <b>that this statement was inaccurate in any</b></p> <p>11 <b>way?</b></p> <p>12 MR. DIAMOND: Same objection.</p> <p>13 A. I'm personally not aware of it.</p> <p>14 <b>Q. Would you look at the second full</b></p> <p>15 <b>paragraph on page 3 and let me read to you</b></p> <p>16 <b>the last two sentences of that paragraph:</b></p> <p>17 <b>"Thelen Reid &amp; Priest failed to</b></p> <p>18 <b>discover and know that the '160 Patent had</b></p> <p>19 <b>expired when they filed, prepared and filed</b></p> <p>20 <b>amendments to claims and re-examination,</b></p> <p>21 <b>(Exhibit 14). It also appears that Thelen</b></p> <p>22 <b>Reid &amp; Priest failed to docket the patent</b></p> <p>23 <b>for payment of maintenance fees."</b></p> <p>24 A. No.</p> <p>25 <b>Q. Are you aware of anyone on behalf</b></p>	<p style="text-align: right;">Page 101</p> <p>1 A. Galloway</p> <p>2 characterizes it as accurate or not, I</p> <p>3 can't say.</p> <p>4 <b>Q. Let me read to you another</b></p> <p>5 <b>statement from the supplemental petition</b></p> <p>6 <b>that was filed on behalf of Quickie, on</b></p> <p>7 <b>page 4 --</b></p> <p>8 MR. DIAMOND: Same exhibit?</p> <p>9 MR. KAMINSKY: Same Exhibit 54.</p> <p>10 BY MR. KAMINSKY:</p> <p>11 <b>Q. "The patent owner" -- that's</b></p> <p>12 <b>Quickie, correct?</b></p> <p>13 A. Correct.</p> <p>14 <b>Q. "The patent owner fully believed</b></p> <p>15 <b>that their valuable legal rights in the</b></p> <p>16 <b>'160 Patent would be justly protected by</b></p> <p>17 <b>the attorneys and law firm of Thelen Reid &amp;</b></p> <p>18 <b>Priest when the patent owner chose them for</b></p> <p>19 <b>representation and executed the Power of</b></p> <p>20 <b>Attorney dated March 4, 2003 (see Exhibit</b></p> <p>21 <b>9).</b></p> <p>22 <b>"Unfortunately, such did not</b></p> <p>23 <b>occur and the patent owner was shocked to</b></p> <p>24 <b>learn from another party on March 23, 2006</b></p> <p>25 <b>that their '160 Patent had expired which</b></p>

27 (Pages 102 to 105)

<p style="text-align: right;">Page 102</p> <p>1 A. Galloway</p> <p>2 gravely prejudiced post-issuance litigation</p> <p>3 proceedings and negotiations."</p> <p>4 Do you see that statement?</p> <p>5 A. Yes, sir.</p> <p>6 <b>Q. Are you aware of anyone on behalf</b></p> <p>7 <b>of Quickie ever advising the U.S. Patent</b></p> <p>8 <b>office that that statement was false?</b></p> <p>9 MR. DIAMOND: Objection to form.</p> <p>10 A. I'm not aware of anyone advising</p> <p>11 the Patent Office specifically on this</p> <p>12 statement.</p> <p>13 <b>Q. Are you aware of anyone advising</b></p> <p>14 <b>the Patent Office that statement was</b></p> <p>15 <b>inaccurate?</b></p> <p>16 MR. DIAMOND: Same objection.</p> <p>17 A. Again, I don't have the documents</p> <p>18 in front of me, but I am aware of Maier,</p> <p>19 the Maier firm sending a further</p> <p>20 correspondence to the Patent Office and I</p> <p>21 don't, I'm not really, I guess, equipped to</p> <p>22 say whether that would characterize this as</p> <p>23 inaccurate or incomplete.</p> <p>24 <b>Q. Now, you are aware as you've just</b></p> <p>25 <b>said that the Maier firm submitted a</b></p>	<p style="text-align: right;">Page 104</p> <p>1 A. Galloway</p> <p>2 reconsideration of that decision.</p> <p>3 Now I'm asking the witness did he</p> <p>4 ever read the decision of the U.S.</p> <p>5 Patent and Trademark Office with</p> <p>6 respect to that petition for</p> <p>7 reconsideration.</p> <p>8 MR. DIAMOND: Withdraw the</p> <p>9 objection.</p> <p>10 A. I don't recall that I read it</p> <p>11 specifically. I was certainly aware of the</p> <p>12 ruling and we were going to petition for</p> <p>13 reconsideration, but I don't recall that I</p> <p>14 specifically read their denial.</p> <p>15 <b>Q. They did deny the petition for</b></p> <p>16 <b>reconsideration, though, is that correct?</b></p> <p>17 A. I believe that's correct.</p> <p>18 MR. KAMINSKY: Let me show you</p> <p>19 Exhibit 60.</p> <p>20 (Exhibit 60, Decision, marked for</p> <p>21 identification, as of this date.)</p> <p>22 BY MR. KAMINSKY:</p> <p>23 <b>Q. This is the decision on petition</b></p> <p>24 <b>of the U.S. Patent and Trademark Office</b></p> <p>25 <b>that is file stamped to show copy mailed</b></p>
<p style="text-align: right;">Page 103</p> <p>1 A. Galloway</p> <p>2 petition for reconsideration of the</p> <p>3 decision I showed you earlier and we marked</p> <p>4 as Exhibit 59, denying the petition to</p> <p>5 reinstate the patent, is that right?</p> <p>6 A. Yes.</p> <p>7 <b>Q. Did you ever read the decision by</b></p> <p>8 <b>the U.S. Patent and Trademark Office with</b></p> <p>9 <b>respect to the petition for</b></p> <p>10 <b>reconsideration?</b></p> <p>11 MR. DIAMOND: Objection to form.</p> <p>12 Asked and answered.</p> <p>13 MR. KAMINSKY: I don't think I</p> <p>14 asked that.</p> <p>15 MR. DIAMOND: I thought we</p> <p>16 covered this document, no?</p> <p>17 MR. KAMINSKY: No, this is the</p> <p>18 second one.</p> <p>19 MR. LODEN: You're talking about</p> <p>20 59?</p> <p>21 MR. DIAMOND: No, 59 is the</p> <p>22 decision denying the petition to</p> <p>23 reinstate the patent.</p> <p>24 The witness has told us there was</p> <p>25 a motion by Maier &amp; Maier for</p>	<p style="text-align: right;">Page 105</p> <p>1 A. Galloway</p> <p>2 October 5, 2007.</p> <p>3 I ask you if you've ever seen</p> <p>4 that document before today.</p> <p>5 MR. DIAMOND: Just to clarify, we</p> <p>6 haven't yet in these documents</p> <p>7 identified whatever was filed on May</p> <p>8 7, 2007, correct?</p> <p>9 MR. KAMINSKY: That's not an</p> <p>10 exhibit, no.</p> <p>11 MR. DIAMOND: Okay.</p> <p>12 A. So can I hear the question again?</p> <p>13 <b>Q. Yes.</b></p> <p>14 <b>Have you ever seen this decision</b></p> <p>15 <b>of the U.S. Patent and Trademark Office?</b></p> <p>16 A. Yes, I believe I have.</p> <p>17 <b>Q. When did you see this document?</b></p> <p>18 A. I again may have seen it around</p> <p>19 the time of its issuance, but I don't</p> <p>20 recall specifics and I certainly reviewed</p> <p>21 it approximately two weeks ago.</p> <p>22 <b>Q. Now, you explained that Maier &amp;</b></p> <p>23 <b>Maier took issue with some of the prior</b></p> <p>24 <b>rulings of the U.S. Patent and Trademark</b></p> <p>25 <b>Office and filed some further papers, is</b></p>

28 (Pages 106 to 109)

<p style="text-align: right;">Page 106</p> <p>1 A. Galloway</p> <p>2 that right?</p> <p>3 A. That's my understanding.</p> <p>4 <b>Q. Did you have a role in the</b></p> <p>5 <b>preparation of the papers that they filed</b></p> <p>6 <b>seeking reconsideration of the Patent and</b></p> <p>7 <b>Trademark Office's first decision that we</b></p> <p>8 <b>marked Exhibit 59?</b></p> <p>9 A. I don't recall that I have a</p> <p>10 specific role in it other than agreeing</p> <p>11 that we needed to fill out our first</p> <p>12 petition and clarify it and that I knew</p> <p>13 that they were going to do that, but I</p> <p>14 didn't have a role in the preparation.</p> <p>15 <b>Q. Did you ever read what they filed</b></p> <p>16 <b>with the U.S. Patent and Trademark Office</b></p> <p>17 <b>to use your word "clarify" the prior</b></p> <p>18 <b>filings?</b></p> <p>19 A. Again, I believe I likely either</p> <p>20 read it or was certainly aware of it at the</p> <p>21 time, but I don't recall specifics and I</p> <p>22 did see the document approximately two</p> <p>23 weeks ago.</p> <p>24 <b>Q. Now would you look at page 3 of</b></p> <p>25 <b>Exhibit 60, please?</b></p>	<p style="text-align: right;">Page 108</p> <p>1 A. Galloway</p> <p>2 and that there is no objective evidence to</p> <p>3 support this conclusion."</p> <p>4 In review of the supplement to</p> <p>5 petition filed December 24, 2006 reveals</p> <p>6 that petitioner herein filed a statement in</p> <p>7 support of petition under 37 CFR 1.37 B</p> <p>8 executed by Todd Sharinn wherein</p> <p>9 Mr. Sharinn states on page 2 that:</p> <p>10 "My responsibility included the</p> <p>11 payment of any maintenance fee that may</p> <p>12 become due for the subject patent ended</p> <p>13 prior to the date wherein payment of a</p> <p>14 first maintenance fee was due as evidenced</p> <p>15 by the enclosed revocation of prior powers</p> <p>16 of attorney signed on behalf of Quickie on</p> <p>17 March 4, 2003 wherein all powers of</p> <p>18 attorney previously given (were) hereby</p> <p>19 revoked," and cites the statement of</p> <p>20 Mr. Sharinn at P2.</p> <p>21 Then it says the patent expired</p> <p>22 on March 24, 2004. The relevant period is</p> <p>23 the period March 24, 2004 and the filing of</p> <p>24 a grantable petition.</p> <p>25 When you read this decision, did</p>
<p style="text-align: right;">Page 107</p> <p>1 A. Galloway</p> <p>2 MR. DIAMOND: Excuse me, sorry to</p> <p>3 interrupt you. I'm looking at the</p> <p>4 original, it look like it's missing</p> <p>5 pages or is incomplete, and I just</p> <p>6 want to make sure.</p> <p>7 MR. KAMINSKY: Oh, I wanted to</p> <p>8 read page 3 and page 5, so you're</p> <p>9 right.</p> <p>10 Will you trust me to read it</p> <p>11 faithfully?</p> <p>12 MR. DIAMOND: Yes.</p> <p>13 MR. KAMINSKY: I apologize. We</p> <p>14 didn't notice that.</p> <p>15 BY MR. KAMINSKY:</p> <p>16 <b>Q. Actually, the document consists</b></p> <p>17 <b>of six pages and what may have happened is</b></p> <p>18 <b>that we copied every other page, for which</b></p> <p>19 <b>I apologize.</b></p> <p>20 I will read to you from page 3</p> <p>21 that continues on to page 4. At the bottom</p> <p>22 of page 3, the decision says:</p> <p>23 "Petitioner next disagrees with</p> <p>24 the decisions, conclusion that Sharinn's</p> <p>25 responsibility concluded on March 4, 2003</p>	<p style="text-align: right;">Page 109</p> <p>1 A. Galloway</p> <p>2 you see that the United States Patent and</p> <p>3 Trademark Office had relied in denying your</p> <p>4 petition for reconsideration on the</p> <p>5 statement that Mr. Sharinn had made and</p> <p>6 which your counsel had submitted on behalf</p> <p>7 of Quickie that I read to you earlier?</p> <p>8 MR. DIAMOND: Objection to form.</p> <p>9 A. I do see what they said here and</p> <p>10 what they gave as their reasons, and I</p> <p>11 guess that that -- that's about all I can</p> <p>12 conclude from it.</p> <p>13 <b>Q. Has anyone gone back to the</b></p> <p>14 <b>Patent Office again, that is the Patent and</b></p> <p>15 <b>Trademark Office, and said with respect to</b></p> <p>16 <b>the petition for reconsideration wait a</b></p> <p>17 <b>minute, give us a chance to get another</b></p> <p>18 <b>statement that shows that what Mr. Sharinn</b></p> <p>19 <b>had said and that we submitted to you was</b></p> <p>20 <b>incorrect?</b></p> <p>21 A. Excuse me, what's the date of</p> <p>22 this document?</p> <p>23 <b>Q. The front page has a file stamp</b></p> <p>24 <b>from the office itself, that's the office</b></p> <p>25 <b>of the patent, the Patent and Trademark</b></p>



29 (Pages 110 to 113)

<p style="text-align: right;">Page 110</p> <p>1 A. Galloway</p> <p>2 Office, that says copy mailed October 5,</p> <p>3 2007.</p> <p>4 The decision itself does not</p> <p>5 appear to have an actual date on it?</p> <p>6 MR. LODEN: Maybe on the pages</p> <p>7 that are missing?</p> <p>8 MR. KAMINSKY: I'll look at them,</p> <p>9 but I don't see them, but I could be</p> <p>10 wrong.</p> <p>11 BY MR. KAMINSKY:</p> <p>12 <b>Q. However, that file stamp that's</b></p> <p>13 <b>there is a stamp of the United States</b></p> <p>14 <b>Patent and Trademark Office. We got it</b></p> <p>15 <b>from that office with that stamp on it.</b></p> <p>16 MR. DIAMOND: The question is has</p> <p>17 there been any filing since and the</p> <p>18 time frame is still alive from our</p> <p>19 perspective, but answer the question.</p> <p>20 A. To my understanding, the question</p> <p>21 has there been a filing since this October</p> <p>22 time stamp of this to reexamine or</p> <p>23 reconsider this decision, and to my</p> <p>24 knowledge, no.</p> <p>25 <b>Q. Were you advised that Mr. Sharinn</b></p>	<p style="text-align: right;">Page 112</p> <p>1 A. Galloway</p> <p>2 <b>Q. You haven't asked him, have you?</b></p> <p>3 A. No.</p> <p>4 <b>Q. Have you ever directed any of</b></p> <p>5 <b>your counsel, that is Maier &amp; Maier, or</b></p> <p>6 <b>your current counsel to approach</b></p> <p>7 <b>Mr. Sharinn either directly or through his</b></p> <p>8 <b>counsel and ask him to file a further</b></p> <p>9 <b>different statement than the one that he</b></p> <p>10 <b>filed on your behalf at the request of your</b></p> <p>11 <b>then counsel in 2006?</b></p> <p>12 MR. DIAMOND: Objection to the</p> <p>13 extent that you're asking him whether</p> <p>14 he had an instruction to his counsel,</p> <p>15 that would be privileged. If it's</p> <p>16 something other than that, then I</p> <p>17 could be okay with it.</p> <p>18 So is the question asking him did</p> <p>19 he instruct his counsel to do</p> <p>20 something, because that would be</p> <p>21 privileged, and I would instruct you</p> <p>22 not to answer that.</p> <p>23 MR. KAMINSKY: Okay, I won't</p> <p>24 pursue it if you feel that way. I</p> <p>25 think he probably could answer that,</p>
<p style="text-align: right;">Page 111</p> <p>1 A. Galloway</p> <p>2 testified yesterday in this lawsuit?</p> <p>3 A. I understand that he did.</p> <p>4 <b>Q. Were you advised that he was</b></p> <p>5 <b>shown the statement he had made in 2006</b></p> <p>6 <b>that was submitted to the Patent and</b></p> <p>7 <b>Trademark Office in connection with your</b></p> <p>8 <b>petition to reinstate the '160 Patent?</b></p> <p>9 A. I don't recall I was specifically</p> <p>10 advised of that, but I understand he</p> <p>11 testified.</p> <p>12 <b>Q. And are you aware that he</b></p> <p>13 <b>testified that he stands by that statement</b></p> <p>14 <b>as of today and would not file a contrary</b></p> <p>15 <b>statement if asked to do it today?</b></p> <p>16 MR. DIAMOND: Object to the form.</p> <p>17 A. I am personally not aware of</p> <p>18 whether that's true or not, no.</p> <p>19 <b>Q. But to your knowledge, no one has</b></p> <p>20 <b>asked him to sign any further statement, is</b></p> <p>21 <b>that correct?</b></p> <p>22 A. I don't know if anyone has asked</p> <p>23 him to sign a further statement or not. To</p> <p>24 my knowledge, he hasn't signed a further</p> <p>25 statement.</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Galloway</p> <p>2 but we'll let it go at that.</p> <p>3 Let's take a break for a couple</p> <p>4 of minutes, is that okay?</p> <p>5 MR. DIAMOND: Sure.</p> <p>6 (Recess taken from 12:01 p.m. to</p> <p>7 12:10 p.m.)</p> <p>8 MR. KAMINSKY: What I read to</p> <p>9 you, I'll show you, Dr. Galloway,</p> <p>10 started down here, right here. There</p> <p>11 is a section where they make a</p> <p>12 decision on what issue, and that</p> <p>13 started the next issue.</p> <p>14 Now, you mentioned that your</p> <p>15 counsel Maier &amp; Maier had submitted</p> <p>16 papers on that petition for</p> <p>17 reconsideration, and I now want to</p> <p>18 show you a document which we're</p> <p>19 marking Exhibit 61, which consists of</p> <p>20 a petition for reconsideration and</p> <p>21 various attachments to it, has a file</p> <p>22 stamp with a U.S. Patent and Trademark</p> <p>23 Office May 7, 2007.</p> <p>24 (Exhibit 61, Decision, marked for</p> <p>25 identification, as of this date.)</p>

30 (Pages 114 to 117)

<p style="text-align: right;">Page 114</p> <p>1 A. Galloway</p> <p>2 <b>Q. Have you ever seen that document</b></p> <p>3 <b>before?</b></p> <p>4 A. Yes, I have.</p> <p>5 <b>Q. And is that what you understand</b></p> <p>6 <b>to be the petition for reconsideration that</b></p> <p>7 <b>your counsel Maier &amp; Maier filed after the</b></p> <p>8 <b>initial decision of the U.S. Patent and</b></p> <p>9 <b>Trademark Office denying the reinstatement</b></p> <p>10 <b>of petition that we marked Exhibit 59?</b></p> <p>11 A. Yes, it is.</p> <p>12 <b>Q. Now, would you look at page 3,</b></p> <p>13 <b>and do you see that in the two full</b></p> <p>14 <b>paragraphs on that page, they're pretty</b></p> <p>15 <b>long so unless you want me to, I won't read</b></p> <p>16 <b>all of that into the record for the moment,</b></p> <p>17 <b>do you see that it is in that section that</b></p> <p>18 <b>your counsel recites the initial decisions</b></p> <p>19 <b>statement about Mr. Sharinn's</b></p> <p>20 <b>responsibility having ended on March 4th</b></p> <p>21 <b>and then your counsel says that you</b></p> <p>22 <b>disagree with that conclusion and says why,</b></p> <p>23 <b>and I'll come back to more of it, but would</b></p> <p>24 <b>you read those two paragraphs?</b></p> <p>25 A. Yes, I have read those</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Galloway</p> <p>2 A. Yes, I do.</p> <p>3 MR. DIAMOND: I'm sorry, I think</p> <p>4 the document is all messed up.</p> <p>5 MR. KAMINSKY: Oh, no.</p> <p>6 MR. DIAMOND: I just want to make</p> <p>7 sure the record is clear. If you take</p> <p>8 a look after page 3, there should be</p> <p>9 more pages and they're missing, and</p> <p>10 then there is a document attached that</p> <p>11 is probably in the a part of this</p> <p>12 document -- off the record.</p> <p>13 MR. KAMINSKY: For the record</p> <p>14 we're going to substitute a full and</p> <p>15 mutually agreed full copy of this, and</p> <p>16 I apologize for the miscopying that we</p> <p>17 seem to have done here, but in the</p> <p>18 meantime --</p> <p>19 BY MR. KAMINSKY:</p> <p>20 <b>Q. In the meantime, do you have page</b></p> <p>21 <b>3 in front of you?</b></p> <p>22 A. Yes, I do.</p> <p>23 <b>Q. That's the section I wanted to</b></p> <p>24 <b>concentrate on in any event.</b></p> <p>25 <b>You saw that I read the first</b></p>
<p style="text-align: right;">Page 115</p> <p>1 A. Galloway</p> <p>2 paragraphs.</p> <p>3 <b>Q. Now, do you see in the second</b></p> <p>4 <b>paragraph your counsel says -- well, before</b></p> <p>5 <b>I go into that, strike that.</b></p> <p>6 <b>Did you read this document before</b></p> <p>7 <b>it was submitted to the U.S. Patent and</b></p> <p>8 <b>Trademark Office?</b></p> <p>9 A. I don't recall that I did. I</p> <p>10 knew that this document was being submitted</p> <p>11 in a general nature, but I don't recall</p> <p>12 specifically that I read the document prior</p> <p>13 to its submission.</p> <p>14 <b>Q. Do you see in the first sentence</b></p> <p>15 <b>of the second full paragraph your counsel</b></p> <p>16 <b>says:</b></p> <p>17 <b>"At the outset, petitioner</b></p> <p>18 <b>disagrees with the office's conclusion that</b></p> <p>19 <b>Sharinn's responsibility for the '160</b></p> <p>20 <b>Patent terminated on March 4, 2003, and</b></p> <p>21 <b>petitioner further notes that there is no</b></p> <p>22 <b>objective evidence in the record that would</b></p> <p>23 <b>support the office's conclusion in that</b></p> <p>24 <b>regard."</b></p> <p>25 <b>Do you see that?</b></p>	<p style="text-align: right;">Page 117</p> <p>1 A. Galloway</p> <p>2 sentence of that paragraph of the second</p> <p>3 full paragraph on page 3, is that right?</p> <p>4 A. Yes.</p> <p>5 <b>Q. And then it goes on to say,</b></p> <p>6 <b>"Moreover, even assuming that the</b></p> <p>7 <b>March 4th date was the date upon which</b></p> <p>8 <b>Sharinn's responsibility ended, an</b></p> <p>9 <b>assumption that petitioner vehemently</b></p> <p>10 <b>contests, the Power of Attorney filed by</b></p> <p>11 <b>Thelen on the very same date shows that at</b></p> <p>12 <b>least Thelen had responsibility for</b></p> <p>13 <b>maintenance fees during the March 4, 2003</b></p> <p>14 <b>to March 5, 2003 period referenced in the</b></p> <p>15 <b>decision."</b></p> <p>16 <b>Do you see that?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. So your counsel was saying that</b></p> <p>19 <b>even if it's correct that Sharinn ceased to</b></p> <p>20 <b>have responsibility because of that Power</b></p> <p>21 <b>of Attorney dated March 4th, that Thelen's</b></p> <p>22 <b>letter shows they submitted at that time,</b></p> <p>23 <b>that at least Thelen had the</b></p> <p>24 <b>responsibility, is that right?</b></p> <p>25 A. And that's on page -- which page?</p>



31 (Pages 118 to 121)

<p style="text-align: right;">Page 118</p> <p>1 A. Galloway</p> <p>2 <b>Q. 3, in the second full paragraph,</b></p> <p>3 <b>the second sentence that begins "Moreover."</b></p> <p>4 MR. DIAMOND: You've got the</p> <p>5 wrong document in front of you.</p> <p>6 MR. LODEN: Marty, I took out</p> <p>7 what I thought were the inadvertent</p> <p>8 inclusion pages. So look at that.</p> <p>9 MR. KAMINSKY: Terrific. Let's</p> <p>10 take a look.</p> <p>11 (Whereupon, an off-the-record</p> <p>12 discussion was held.)</p> <p>13 BY MR. KAMINSKY:</p> <p>14 <b>Q. I want to give you an opportunity</b></p> <p>15 <b>to read those two paragraphs again.</b></p> <p>16 A. Okay.</p> <p>17 <b>Q. Now, in the first sentence of the</b></p> <p>18 <b>second paragraph, your counsel is saying we</b></p> <p>19 <b>don't agree that Sharinn's responsibility</b></p> <p>20 <b>ended on March 4th and there is no</b></p> <p>21 <b>objective evidence in the record that would</b></p> <p>22 <b>support the office's conclusion in that</b></p> <p>23 <b>regard.</b></p> <p>24 <b>Do you see that?</b></p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 120</p> <p>1 A. Galloway</p> <p>2 of Attorney.</p> <p>3 <b>Q. Okay.</b></p> <p>4 <b>Now, your counsel said there is</b></p> <p>5 <b>no objective evidence in the record to</b></p> <p>6 <b>support the conclusion that the Patent and</b></p> <p>7 <b>Trademark Office reached that Sharinn's</b></p> <p>8 <b>responsibility ended on March 4th.</b></p> <p>9 <b>Do you see that?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. What is the basis for them saying</b></p> <p>12 <b>that there was no objective evidence in the</b></p> <p>13 <b>record for that fact?</b></p> <p>14 A. Well, as I said, I didn't really</p> <p>15 read this specifically at the time, and so</p> <p>16 I don't know if I'm really qualified to say</p> <p>17 what their basis is for saying that.</p> <p>18 <b>Q. Did you ever discuss that with</b></p> <p>19 <b>him, did you ever discuss that particular</b></p> <p>20 <b>sentence with him?</b></p> <p>21 A. Not that I recall.</p> <p>22 <b>Q. Now, you do recall that there was</b></p> <p>23 <b>a statement for Mr. Sharinn that your</b></p> <p>24 <b>counsel submitted to the Patent and</b></p> <p>25 <b>Trademark Office in which Mr. Sharinn said</b></p>
<p style="text-align: right;">Page 119</p> <p>1 A. Galloway</p> <p>2 <b>Q. In the second sentence they say,</b></p> <p>3 <b>even assuming that's the case, as to which</b></p> <p>4 <b>"petitioner vehemently contests," the Power</b></p> <p>5 <b>of Attorney filed by Thelen on the very</b></p> <p>6 <b>same day shows that at least Thelen had</b></p> <p>7 <b>responsibility for maintenance fees during</b></p> <p>8 <b>the March 4, 2003 to December 5, 2003</b></p> <p>9 <b>period referenced in the decision.</b></p> <p>10 <b>Do you see that?</b></p> <p>11 A. Yes, I do.</p> <p>12 <b>Q. So your counsel is saying that</b></p> <p>13 <b>because of that March 4th revocation of</b></p> <p>14 <b>Power of Attorney and Power of Attorney</b></p> <p>15 <b>form that we've marked as Exhibit 51 or</b></p> <p>16 <b>that's attached to the letter, both of</b></p> <p>17 <b>which comprise Exhibit 51, means that at</b></p> <p>18 <b>least Thelen had responsibility because</b></p> <p>19 <b>they filed that form in March of 2004,</b></p> <p>20 <b>correct?</b></p> <p>21 A. I believe counsel was saying that</p> <p>22 while we disagreed that Sharinn does not</p> <p>23 have responsibility, we disagree with that</p> <p>24 conclusion, we do agree that Thelen did</p> <p>25 have responsibility based upon this Power</p>	<p style="text-align: right;">Page 121</p> <p>1 A. Galloway</p> <p>2 this very statement, namely that his</p> <p>3 responsibility had ended on March 4, 2003</p> <p>4 when that revocation of Power of Attorney</p> <p>5 form was filed.</p> <p>6 Do you remember that?</p> <p>7 A. I do recall that.</p> <p>8 <b>Q. And you saw that in Exhibit 60</b></p> <p>9 <b>the decision of the Patent and Trademark</b></p> <p>10 <b>Office denying your petition for</b></p> <p>11 <b>reconsideration on pages 3 and 4, the U.S.</b></p> <p>12 <b>Patent and Trademark Office said we don't</b></p> <p>13 <b>agree with you there's no objective</b></p> <p>14 <b>evidence, in fact we specifically refer to</b></p> <p>15 <b>Mr. Sharinn's statement -- do you remember</b></p> <p>16 <b>that?</b></p> <p>17 MR. DIAMOND: Objection to form.</p> <p>18 A. Yeah, I do understand what was</p> <p>19 said in Exhibit 60.</p> <p>20 <b>Q. Do you take issue with the U.S.</b></p> <p>21 <b>Patent and Trademark Office's conclusion in</b></p> <p>22 <b>Exhibit 60 that there is objective evidence</b></p> <p>23 <b>in the record submitted by Quickie's</b></p> <p>24 <b>counsel and in fact Mr. Sharinn's</b></p> <p>25 <b>responsibility had ended on March 4, 2004?</b></p>

32 (Pages 122 to 125)

<p style="text-align: right;">Page 122</p> <p>1 A. Galloway</p> <p>2 MR. DIAMOND: Objection to form.</p> <p>3 A. Yes, I do.</p> <p>4 <b>Q. Okay.</b></p> <p>5 <b>So you don't recognize</b></p> <p>6 <b>Mr. Sharinn's statement and the revocation</b></p> <p>7 <b>of power forms as objective evidence</b></p> <p>8 <b>supporting the Patent and Trademark</b></p> <p>9 <b>Office's conclusion that Mr. Sharinn's</b></p> <p>10 <b>responsibility had ended on March 4, 2003?</b></p> <p>11 A. I don't recognize that as being</p> <p>12 all of the evidence or documents involved</p> <p>13 for that decision.</p> <p>14 <b>Q. Well, all I'm asking you is the</b></p> <p>15 <b>Patent and Trademark Office says there is</b></p> <p>16 <b>some objective evidence in the record that</b></p> <p>17 <b>supports our conclusion that Mr. Sharinn's</b></p> <p>18 <b>responsibility for the '160 Patent ended on</b></p> <p>19 <b>March 4, 2003.</b></p> <p>20 <b>Do you disagree with that</b></p> <p>21 <b>statement by the Patent Office that there</b></p> <p>22 <b>is objective evidence in the record?</b></p> <p>23 MR. DIAMOND: Objection to form.</p> <p>24 A. Again, I don't know if -- I think</p> <p>25 what the statement says is some evidence to</p>	<p style="text-align: right;">Page 124</p> <p>1 A. Galloway</p> <p>2 after the U.S. Patent and Trademark Office</p> <p>3 has denied your petition for</p> <p>4 reconsideration, correct?</p> <p>5 A. Correct.</p> <p>6 <b>Q. And as of this time, you've</b></p> <p>7 <b>submitted no further evidence to the Patent</b></p> <p>8 <b>and Trademark Office, is that right?</b></p> <p>9 MR. DIAMOND: Objection. Asked</p> <p>10 and answered.</p> <p>11 A. At this time or since that time,</p> <p>12 since that rejection would have been in</p> <p>13 litigation and we felt it's not wise to</p> <p>14 submit for reconsideration while we were in</p> <p>15 litigation, and it's my understanding that</p> <p>16 at the time of this consideration that</p> <p>17 there were many documents requested, that</p> <p>18 we requested from Greenberg and from Thelen</p> <p>19 and from Todd Sharinn for the Patent Office</p> <p>20 which they didn't have available when they</p> <p>21 made this decision and which we should</p> <p>22 eventually make available to them so they</p> <p>23 would have complete objective evidence.</p> <p>24 But since we were in litigation,</p> <p>25 we decided not to submit that information</p>
<p style="text-align: right;">Page 123</p> <p>1 A. Galloway</p> <p>2 be taken under consideration, which they</p> <p>3 did.</p> <p>4 What I disagree with is that that</p> <p>5 was all of the evidence involved for making</p> <p>6 that decision. I think there's potentially</p> <p>7 other evidence that they could consider to</p> <p>8 make that decision which they didn't have</p> <p>9 available at the time of that decision.</p> <p>10 <b>Q. Now, are you aware of any other</b></p> <p>11 <b>such evidence that was submitted to the</b></p> <p>12 <b>U.S. Patent and Trademark Office at any</b></p> <p>13 <b>time that contradicts Mr. Sharinn's</b></p> <p>14 <b>statement other than the statement in</b></p> <p>15 <b>Exhibit 61, your petition for</b></p> <p>16 <b>reconsideration that you don't agree with</b></p> <p>17 <b>Mr. Sharinn's statement, or that you then</b></p> <p>18 <b>don't, no longer agree with Mr. Sharinn's</b></p> <p>19 <b>statement?</b></p> <p>20 A. As of this time, we've not given</p> <p>21 any other or we haven't submitted any other</p> <p>22 petition to the Patent Office for further</p> <p>23 reconsideration beyond what we submitted in</p> <p>24 Exhibit 61.</p> <p>25 <b>Q. This is now a year and a month</b></p>	<p style="text-align: right;">Page 125</p> <p>1 A. Galloway</p> <p>2 until the litigation is settled.</p> <p>3 <b>Q. Okay.</b></p> <p>4 <b>Can you point to any specific</b></p> <p>5 <b>objective evidence, as you personally sit</b></p> <p>6 <b>here today, that shows that the prior</b></p> <p>7 <b>statements made by Quickie to the Patent</b></p> <p>8 <b>Office and the prior statements that it</b></p> <p>9 <b>submitted to the Patent Office on this</b></p> <p>10 <b>subject were incorrect?</b></p> <p>11 MR. DIAMOND: Objection to form.</p> <p>12 A. Yeah, I think there's evidence</p> <p>13 that we had a continued ongoing</p> <p>14 relationship with Greenberg and Quickie for</p> <p>15 maintenance of the '160 Patent and for</p> <p>16 further prosecution of the '243 Patent for</p> <p>17 the following two and a half to three years</p> <p>18 after that, as well as other potential</p> <p>19 intellectual property prosecution that was</p> <p>20 being handled by Todd Sharinn and Greenberg</p> <p>21 until he left the firm and that that is</p> <p>22 evidence that they had some responsibility,</p> <p>23 since they were billing us and charging us</p> <p>24 for that, to advise us of what was going</p> <p>25 on.</p>

33 (Pages 126 to 129)

<p style="text-align: right;">Page 126</p> <p>1 A. Galloway</p> <p>2 It wasn't like we ended the</p> <p>3 relationship with them. We had an ongoing</p> <p>4 relationship with them for Quickie, for</p> <p>5 this, for another patent application for</p> <p>6 Quickie, and for several other things with</p> <p>7 Quickie, and continued to interact with</p> <p>8 them. We just weren't doing the</p> <p>9 re-examination of the patent with them.</p> <p>10 So I think that evidence should</p> <p>11 have been made available. It wasn't made</p> <p>12 available, which I think is an ethical</p> <p>13 problem with Greenberg because they were</p> <p>14 our clients and we hired them to do that</p> <p>15 and we requested that through the Patent</p> <p>16 Office why didn't they make that available</p> <p>17 and why didn't Todd Sharinn make it</p> <p>18 available since we were continuing to do</p> <p>19 work with them -- that seems like a little</p> <p>20 out of line to me, and also Thelen should</p> <p>21 have made it available. So I'm not like</p> <p>22 giving any of them off.</p> <p>23 You know, but again, we were</p> <p>24 four, three heart surgeons operating 80 to</p> <p>25 100 hours a week, we have a small</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Galloway</p> <p>2 <b>Q. -- 2003.</b></p> <p>3 <b>With that said, and your counsel</b></p> <p>4 <b>can correct me if I'm wrong, because I'm</b></p> <p>5 <b>not trying to misstate something, with that</b></p> <p>6 <b>said, let's put aside the issue of billing,</b></p> <p>7 <b>is there anything other than in your mind</b></p> <p>8 <b>that you feel they billed you for that and</b></p> <p>9 <b>build you for other IP work that you say</b></p> <p>10 <b>shows that there was a continuing</b></p> <p>11 <b>relationship with Greenberg for maintenance</b></p> <p>12 <b>of the '160 Patent?</b></p> <p>13 A. Well, yes. Again, if I recall --</p> <p>14 <b>Q. Let me stop you for just a</b></p> <p>15 <b>minute.</b></p> <p>16 <b>I certainly want to let you</b></p> <p>17 <b>answer, but just in the interests of</b></p> <p>18 <b>time -- I understand how you feel about it</b></p> <p>19 <b>and you've explained why you think they</b></p> <p>20 <b>should have had a responsibility, and if</b></p> <p>21 <b>you want to add to that you're welcome to</b></p> <p>22 <b>do it -- but when I'm asking you is there</b></p> <p>23 <b>any evidence, what I'm really asking you is</b></p> <p>24 <b>do you have a letter, an agreement, a</b></p> <p>25 <b>document, testimony from somewhere from</b></p>
<p style="text-align: right;">Page 127</p> <p>1 A. Galloway</p> <p>2 organization we put together here, we hire</p> <p>3 this big firm, we spend millions of</p> <p>4 dollars, I expected a little bit more from</p> <p>5 these firms than that.</p> <p>6 <b>Q. You said that there is evidence</b></p> <p>7 <b>that we had a continued ongoing</b></p> <p>8 <b>relationship with Greenberg and Quickie for</b></p> <p>9 <b>maintenance of the '160 Patent.</b></p> <p>10 <b>What is that evidence of an</b></p> <p>11 <b>ongoing relationship with Greenberg for</b></p> <p>12 <b>maintenance of the '160 Patent?</b></p> <p>13 A. Well, I think they billed us for</p> <p>14 that. I think that's the first evidence.</p> <p>15 So I think -- and we had other</p> <p>16 intellectual property within Quickie that</p> <p>17 they billed us for during that time, but I</p> <p>18 guess that wasn't the specific question.</p> <p>19 <b>Q. All right.</b></p> <p>20 <b>I will tell you that we are not</b></p> <p>21 <b>aware of any bill for maintenance of the</b></p> <p>22 <b>'160 Patent and certainly for any bill with</b></p> <p>23 <b>respect to the '160 Patent after March of</b></p> <p>24 <b>2004.</b></p> <p>25 A. If I could further expand on --</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Galloway</p> <p>2 somebody else, someone who is other than,</p> <p>3 you know, what you've explained before you</p> <p>4 feel about this, and as I say I'm happy to</p> <p>5 let you restate that, but what I'm really</p> <p>6 looking for is do you have some sort of a</p> <p>7 piece of paper or testimony or something</p> <p>8 like that?</p> <p>9 Now, with that said, is there</p> <p>10 evidence that supports your statement that</p> <p>11 the Greenberg Traurig firm had a continuing</p> <p>12 relationship with Quickie for maintenance</p> <p>13 of the '160 Patent after the revocation of</p> <p>14 Power of Attorney form was filed in March</p> <p>15 of 2003?</p> <p>16 A. Well, yes, I think there is.</p> <p>17 First I think there were a letter</p> <p>18 or letters from either Mark Evens on behalf</p> <p>19 of Thelen to Todd Sharinn or by Alan Fell</p> <p>20 or both saying that they would take and</p> <p>21 would like to have the litigation</p> <p>22 information related to the '160 Patent, but</p> <p>23 that they would continue to work on all</p> <p>24 other aspects of things related to Quickie.</p> <p>25 I don't know the specifics of</p>

34 (Pages 130 to 133)

<p style="text-align: right;">Page 130</p> <p>1 A. Galloway</p> <p>2 that letter, but I remember something along</p> <p>3 those lines.</p> <p>4 Which -- give me one second to</p> <p>5 think because I'm stretching my memory a</p> <p>6 little bit.</p> <p>7 <b>Q. By all means take as much time as</b></p> <p>8 <b>you need, within reason of course, but</b></p> <p>9 <b>think it out and if there is something else</b></p> <p>10 <b>you can point to, please do.</b></p> <p>11 A. Well, again, it was my</p> <p>12 expectation that if they were transferring</p> <p>13 that right which -- if Greenberg was</p> <p>14 transferring the need to inform us of the</p> <p>15 patent file filing fees, if they were</p> <p>16 transferring that to Thelen, that they</p> <p>17 would have wanted to inform us of that, and</p> <p>18 two they would have informed the Patent</p> <p>19 Office of that, which I don't think they</p> <p>20 did.</p> <p>21 So it's my understanding that the</p> <p>22 Patent Office still lists Greenberg as the</p> <p>23 maintenance patent attorneys, which I think</p> <p>24 is evidence that that was their</p> <p>25 responsibility.</p>	<p style="text-align: right;">Page 132</p> <p>1 A. Galloway</p> <p>2 letter is somewhat nebulous, but it says</p> <p>3 back in paragraph 2 that Thelen Reid &amp;</p> <p>4 Priest will be substituted for Greenberg</p> <p>5 Traurig in the referenced litigation and</p> <p>6 you and Greenberg Traurig, and in paragraph</p> <p>7 3, it says you and Greenberg Traurig will</p> <p>8 continue to have various patent</p> <p>9 applications pending on behalf of Quickie,</p> <p>10 LLC and Quickie Vision, LLC.</p> <p>11 <b>Q. Now, the date of this letter is</b></p> <p>12 <b>October 2002, correct?</b></p> <p>13 A. Correct.</p> <p>14 <b>Q. That's about 5 months before</b></p> <p>15 <b>Quickie submitted through Thelen Reid &amp;</b></p> <p>16 <b>Priest a revocation of Greenberg Traurig's</b></p> <p>17 <b>Power of Attorney with respect to the '160</b></p> <p>18 <b>Patent, correct?</b></p> <p>19 MR. DIAMOND: Objection to form.</p> <p>20 A. I believe that's the timing of</p> <p>21 that, yes.</p> <p>22 <b>Q. Now, you said that the PTO still</b></p> <p>23 <b>listed Greenberg Traurig as counsel. I</b></p> <p>24 <b>will tell you, I'm not aware of it, but</b></p> <p>25 <b>let's take you at what you remember.</b></p>
<p style="text-align: right;">Page 131</p> <p>1 A. Galloway</p> <p>2 I think there's absence of</p> <p>3 evidence that they asked for transfer of</p> <p>4 that to Thelen, or that Thelen asked for</p> <p>5 transfer of that. So neither one of them</p> <p>6 evidently thought that was clear that they</p> <p>7 were asked that that would happen, and</p> <p>8 therefore I thought it was their</p> <p>9 responsibility to continue that as we</p> <p>10 continued to work with them on other</p> <p>11 things. We didn't fire Greenberg. We were</p> <p>12 still working with Greenberg, Quickie was</p> <p>13 working with Greenberg.</p> <p>14 <b>Q. Now, let me show you a document</b></p> <p>15 <b>which has been previously marked Exhibit</b></p> <p>16 <b>22. It's a letter from Alan Fell to Todd</b></p> <p>17 <b>Sharinn at Greenberg Traurig dated October</b></p> <p>18 <b>15, 2002.</b></p> <p>19 Do you see, read the third</p> <p>20 paragraph and tell me if that's the letter</p> <p>21 that you were referring to a moment ago</p> <p>22 where you said that Greenberg will continue</p> <p>23 to handle patent applications for Quickie.</p> <p>24 A. Well, I think this letter is -- I</p> <p>25 don't know if it's the same letter -- this</p>	<p style="text-align: right;">Page 133</p> <p>1 A. Galloway</p> <p>2 You are aware that Quickie,</p> <p>3 through Thelen Reid &amp; Priest, submitted to</p> <p>4 the PTO two forms revoking the powers of</p> <p>5 attorney for Greenberg Traurig and changing</p> <p>6 the address for all communications to</p> <p>7 Thelen Reid &amp; Priest.</p> <p>8 Those are the forms we showed you</p> <p>9 earlier that are dated March 4, 2003 that</p> <p>10 you signed, is that right?</p> <p>11 A. Yes, I am aware of the forms you</p> <p>12 showed me earlier.</p> <p>13 <b>Q. And you saw that Greenberg</b></p> <p>14 <b>Traurig received a notice from the PTO that</b></p> <p>15 <b>we marked as Exhibit 50 that we showed you</b></p> <p>16 <b>that advised Greenberg Traurig that the</b></p> <p>17 <b>Power of Attorney to you in this</b></p> <p>18 <b>application has been revoked and that</b></p> <p>19 <b>"further correspondence will be mailed to</b></p> <p>20 <b>the new addressee of record."</b></p> <p>21 Do you see that in Exhibit 50?</p> <p>22 A. Yes, I do.</p> <p>23 <b>Q. Now let me show you a document</b></p> <p>24 <b>that we will mark Exhibit 62.</b></p> <p>25 <b>(Exhibit 62, E-mail, marked for</b></p>

35 (Pages 134 to 137)

<p style="text-align: right;">Page 134</p> <p>1 A. Galloway  2 identification, as of this date.)  3 BY MR. KAMINSKY:  4 <b>Q. It is an e-mail from Mark</b>  5 <b>Evans -- actually, it's a chain of e-mails</b>  6 <b>in October 2006 between Mark Evans and</b>  7 <b>Thelen Reid &amp; Priest, and it was produced</b>  8 <b>by Thelen in this case under Bates number T</b>  9 <b>758 to 759.</b>  10 <b>Have you ever seen that document</b>  11 <b>before?</b>  12 MR. LODEN: Marty, let me just  13 note for the record that I believe  14 Thelen took the position at some point  15 that certain of these e-mails were  16 inadvertently produced.  17 I'm looking at the e-mail at the  18 top from Andrew Ness to Robert Blum,  19 that appears to be a communication  20 within Thelen itself, and I know that  21 Steve Crane took the position that  22 these were inadvertent productions and  23 asked us to return them.  24 I don't recall whether you were  25 included on that or not, but I just</p>	<p style="text-align: right;">Page 136</p> <p>1 A. Galloway  2 MR. LODEN: Of course.  3 BY MR. KAMINSKY:  4 <b>Q. In any event, for the moment,</b>  5 <b>let's continue on.</b>  6 <b>Do you see that in the second</b>  7 <b>e-mail in this chain that we've marked</b>  8 <b>Exhibit 62, Mark Evans, who was no longer</b>  9 <b>at that time with Thelen, writes to Andrew</b>  10 <b>Ness at Thelen, writes:</b>  11 <b>"Thanks, Andy, I don't profess to</b>  12 <b>be an expert, but my understanding at the</b>  13 <b>time was that question (TRP) was taking</b>  14 <b>responsibility for the patent and that is</b>  15 <b>how I read Bob's filing.</b>  16 <b>"Second, I remember a</b>  17 <b>conversation early on with Bob about not</b>  18 <b>missing fee deadlines.</b>  19 <b>"Finally, maintenance fees are</b>  20 <b>part of representing the patent, so I am</b>  21 <b>surprised that Bob as a practice patent</b>  22 <b>prosecutor wouldn't advise Quickie and</b>  23 <b>Steve that deadlines were approaching so we</b>  24 <b>would not lose his patent."</b>  25 MR. DIAMOND: He would not lose.</p>
<p style="text-align: right;">Page 135</p> <p>1 A. Galloway  2 want to note for the record this may  3 be one of those documents that Thelen  4 recalled.  5 MR. CHU: He did say this might  6 have been inadvertently produced. He  7 hasn't asked us to return it. He said  8 he might. He hasn't done it.  9 MR. LODEN: He asked us, and we  10 did.  11 MR. KAMINSKY: We'll look into  12 that question.  13 MR. LODEN: Okay.  14 MR. KAMINSKY: And if for some  15 reason we're using a document that  16 should not be used, then we'll just  17 expunge this aspect of it.  18 MR. LODEN: Fair enough.  19 MR. DIAMOND: It's between you  20 and Thelen.  21 MR. KAMINSKY: Yes. We'll talk  22 to them about it. But it's not our  23 intention to use attorney-client  24 material that may have been  25 inadvertently produced.</p>	<p style="text-align: right;">Page 137</p> <p>1 A. Galloway  2 MR. KAMINSKY: Thank you for the  3 correction, he would not lose his  4 patent.  5 BY MR. KAMINSKY:  6 <b>Q. Do you see that?</b>  7 A. Yes.  8 <b>Q. Were you aware that Thelen was</b>  9 <b>being told by its former partner that</b>  10 <b>Mr. Evans himself felt that Thelen had</b>  11 <b>taken on the responsibility for the</b>  12 <b>maintenance fees?</b>  13 A. This is the first time I've seen  14 this document, so I wasn't aware of this  15 document.  16 <b>Q. Okay.</b>  17 <b>Now, just some other general</b>  18 <b>questions for the moment with you.</b>  19 <b>Have you ever been involved in</b>  20 <b>another lawsuit?</b>  21 A. Related to?  22 <b>Q. Anything.</b>  23 A. Anything. I've been involved in  24 one or two legal malpractice lawsuits.  25 <b>Q. Have you given testimony by way</b></p>

36 (Pages 138 to 141)

<p style="text-align: right;">Page 138</p> <p>1 A. Galloway</p> <p>2 of deposition or at trial in those matters?</p> <p>3 MR. DIAMOND: I just want to make</p> <p>4 clear for the record, when you say</p> <p>5 legal malpractice, you mean medical</p> <p>6 malpractice?</p> <p>7 THE WITNESS: I meant medical</p> <p>8 malpractice.</p> <p>9 A. Medical malpractice lawsuits.</p> <p>10 <b>Q. Are these lawsuits that were</b></p> <p>11 <b>brought against you?</b></p> <p>12 A. There have been, I think, maybe</p> <p>13 one or two that I've given a deposition of</p> <p>14 lawsuits brought against me and there may</p> <p>15 have been one or two that I've given</p> <p>16 deposition in as a defense for lawsuits</p> <p>17 brought against someone else.</p> <p>18 <b>Q. Do you have copies of the</b></p> <p>19 <b>transcripts of those depositions?</b></p> <p>20 A. No.</p> <p>21 <b>Q. Did any of those cases go to</b></p> <p>22 <b>trial?</b></p> <p>23 A. I believe one case did go to</p> <p>24 trial.</p> <p>25 <b>Q. Was that a case that was against</b></p>	<p style="text-align: right;">Page 140</p> <p>1 A. Galloway</p> <p>2 that's been retained by Quickie in</p> <p>3 connection with this case?</p> <p>4 A. No.</p> <p>5 MR. DIAMOND: Well, I'm going to</p> <p>6 state for the record that we'll make a</p> <p>7 decision on the, question as counsel</p> <p>8 will make a decision on disclosure of</p> <p>9 experts in a timely fashion.</p> <p>10 MR. KAMINSKY: Let's go off the</p> <p>11 record for a minute.</p> <p>12 (Whereupon, an off-the-record</p> <p>13 discussion was held.)</p> <p>14 BY MR. KAMINSKY:</p> <p>15 <b>Q. Now talking about the '160</b></p> <p>16 <b>Patent, can you tell us what your</b></p> <p>17 <b>understanding of the patented technology</b></p> <p>18 <b>is?</b></p> <p>19 A. Yes. The '160 Patent was really,</p> <p>20 encompassed two separate inventions or</p> <p>21 methodologies for auto securing or auto</p> <p>22 attaching suture without the need for tying</p> <p>23 knots, which would have the potential to</p> <p>24 simplify and streamline various aspects of</p> <p>25 surgical procedures.</p>
<p style="text-align: right;">Page 139</p> <p>1 A. Galloway</p> <p>2 you?</p> <p>3 A. Yes.</p> <p>4 <b>Q. What was the result of the trial?</b></p> <p>5 A. There was an out-of-court</p> <p>6 settlement with that case.</p> <p>7 <b>Q. Did you give trial testimony</b></p> <p>8 <b>before the court?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. Before the settlement?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. And do you have a copy of the</b></p> <p>13 <b>trial transcript?</b></p> <p>14 A. No.</p> <p>15 <b>Q. Have you ever been the subject of</b></p> <p>16 <b>a disciplinary proceeding or other kind of</b></p> <p>17 <b>proceeding against you besides the cases</b></p> <p>18 <b>you've just told us about?</b></p> <p>19 A. I have not been the subject of</p> <p>20 any disciplinary proceeding.</p> <p>21 <b>Q. Have you been the subject of any</b></p> <p>22 <b>administrative proceeding?</b></p> <p>23 A. No.</p> <p>24 <b>Q. Your counsel told us about one</b></p> <p>25 <b>expert. Are you aware of any other expert</b></p>	<p style="text-align: right;">Page 141</p> <p>1 A. Galloway</p> <p>2 <b>Q. And what was the intended product</b></p> <p>3 <b>for the patented technology?</b></p> <p>4 A. Well, there was multiple</p> <p>5 potential products for that technology</p> <p>6 since the field of cardiac surgery is</p> <p>7 significantly changing in that the field</p> <p>8 had a need for more automated attachments</p> <p>9 when sutures were used to secure a device</p> <p>10 to a tissue or sutures were used to retract</p> <p>11 or pull on a tissue rather than tying knots</p> <p>12 shall because the field was moving to a</p> <p>13 less invasive format overall.</p> <p>14 So our idea was that if we could</p> <p>15 facilitate that movement with a new</p> <p>16 technology, we could rapidly retain sutures</p> <p>17 without the need for the surgeons to tie</p> <p>18 the conventional knots, which is the way</p> <p>19 it's been done for 100 years.</p> <p>20 And this was, the ideas that we</p> <p>21 came up with to obtain that were the ideas</p> <p>22 that were put and captured in the '160</p> <p>23 Patent.</p> <p>24 <b>Q. Was this a suturing device for</b></p> <p>25 <b>heart valve replacement surgery?</b></p>



37 (Pages 142 to 145)

<p style="text-align: right;">Page 142</p> <p>1 A. Galloway</p> <p>2 A. This was -- it's not a suturing</p> <p>3 device. This was a device for attachment</p> <p>4 of any mechanical tissue or mechanical</p> <p>5 device to tissue without the need for tying</p> <p>6 or placing knots in suture.</p> <p>7 So one potential usage would be</p> <p>8 for heart valve attachment. One potential</p> <p>9 usage would be for tissue attachment or</p> <p>10 tissue retraction. Other potential usages</p> <p>11 would be for attachment of any medical</p> <p>12 device to a tissue, pacemakers to a tissue,</p> <p>13 devices to a vessel wall, devices</p> <p>14 intra-abdominally to intra-abdominal</p> <p>15 tissues would be a potential manifestation</p> <p>16 of that device.</p> <p>17 <b>Q. Does that include heart valve</b></p> <p>18 <b>replacement?</b></p> <p>19 A. It does include heart valve</p> <p>20 replacement.</p> <p>21 <b>Q. Do you perform any of this kind</b></p> <p>22 <b>of surgery yourself?</b></p> <p>23 A. Yes, I perform a large volume of</p> <p>24 heart valve replacement surgery and other</p> <p>25 surgery and particularly the inventors,</p>	<p style="text-align: right;">Page 144</p> <p>1 A. Galloway</p> <p>2 <b>Q. Is this product or the product</b></p> <p>3 <b>that you anticipated would be developed in</b></p> <p>4 <b>the '160 Patent different from a suture</b></p> <p>5 <b>holder insert that might be used in a</b></p> <p>6 <b>retractor for beating heart surgery?</b></p> <p>7 A. Well, I think the suture holder</p> <p>8 that was subsequently developed for</p> <p>9 retraction in beating heart surgery we felt</p> <p>10 was a knockoff or infringement on this</p> <p>11 patent by a company that saw the technology</p> <p>12 and then transferred the engineer to</p> <p>13 another section of the company and then</p> <p>14 came back a year later and used the device</p> <p>15 within that section of the company.</p> <p>16 So if that's the retraction</p> <p>17 device you're referring to, then that was</p> <p>18 our invention and we felt that that was</p> <p>19 subsequently then knocked off by, if you</p> <p>20 will, or duplicate by several other</p> <p>21 companies as an infringement on our patent.</p> <p>22 <b>Q. Have you brought infringement</b></p> <p>23 <b>action -- did you bring any infringement</b></p> <p>24 <b>actions against any of those companies?</b></p> <p>25 A. We brought infringement actions</p>
<p style="text-align: right;">Page 143</p> <p>1 A. Galloway</p> <p>2 myself and Dr. Colvin and Dr. Grassi in</p> <p>3 particular felt that we had an idea of</p> <p>4 where the technological needs of the field</p> <p>5 were going and we felt that one of those</p> <p>6 technological questions at that needed to</p> <p>7 be answered was the way to more easily</p> <p>8 secure material to tissue without the need</p> <p>9 for knots.</p> <p>10 That's what then led us to look</p> <p>11 at ways we could do that and develop this</p> <p>12 invention and then obtain the patent.</p> <p>13 <b>Q. Do you use this invention in your</b></p> <p>14 <b>own surgery at this time?</b></p> <p>15 A. Well, the invention -- first of</p> <p>16 all -- the answer is no at the present</p> <p>17 time.</p> <p>18 <b>Q. And is that because it's never</b></p> <p>19 <b>been actually developed and manufactured?</b></p> <p>20 A. That's correct.</p> <p>21 <b>Q. Now, there is heart surgery that</b></p> <p>22 <b>you do when the heart is beating and heart</b></p> <p>23 <b>surgery that you do when the heart is not</b></p> <p>24 <b>beating, is that correct?</b></p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 145</p> <p>1 A. Galloway</p> <p>2 against Medtronic and we had others that we</p> <p>3 were discussing infringement action</p> <p>4 against, but we, such as Guidant I think</p> <p>5 was one, but we never actually brought it</p> <p>6 because it was just too costly to proceed</p> <p>7 with too many actions at once.</p> <p>8 <b>Q. Can you tell us in your own words</b></p> <p>9 <b>what is your understanding of the benefits</b></p> <p>10 <b>or what would be the benefits of the '160</b></p> <p>11 <b>Patent to a manufacturer?</b></p> <p>12 A. Well, again, that would depend</p> <p>13 upon what field of use that that was going</p> <p>14 to be used in.</p> <p>15 I've previously testified, and</p> <p>16 you should have probably access to that,</p> <p>17 the benefits of the '160 Patent to the</p> <p>18 suture retraction off-pump technology or</p> <p>19 for use in off-pump bypass surgery because</p> <p>20 that was the way that we felt Medtronic was</p> <p>21 infringing on our product or on our</p> <p>22 invention.</p> <p>23 So in that particular field,</p> <p>24 then, it would be used to elevate and</p> <p>25 retract the heart in the various positions</p>

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<p style="text-align: right;">Page 146</p> <p>1 A. Galloway</p> <p>2 that would enable the surgeon to do</p> <p>3 coronary bypass surgery without having to</p> <p>4 place the patient on the heart lung machine</p> <p>5 and without having to stop the heart, and</p> <p>6 we felt and many other surgeons, if fact</p> <p>7 the whole field was beginning to feel, that</p> <p>8 that would have some significant advantages</p> <p>9 in certain groups of patients because it</p> <p>10 would avoid them to certain risk of the</p> <p>11 heart lung machine and this device was</p> <p>12 essential to achieving that retraction and</p> <p>13 placement in the heart that allowed that</p> <p>14 type of what was a relatively new technique</p> <p>15 at that time in cardiology.</p> <p>16 If you're speaking of valve</p> <p>17 technology, then there is potential to</p> <p>18 place valves either without the heart lung</p> <p>19 machine, which we're still working on with</p> <p>20 similar technology, different, and there is</p> <p>21 potential through less invasive incisions</p> <p>22 or even through conventional incisions to</p> <p>23 replace the valve without having to tie the</p> <p>24 knots, which would roughly cut in half the</p> <p>25 amount of time that was required for the</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Galloway</p> <p>2 would totally change the market of what</p> <p>3 devices were being used to treat that type</p> <p>4 of patient population.</p> <p>5 So if you have the two</p> <p>6 populations that we're talking about,</p> <p>7 you're talking about the population of</p> <p>8 coronary artery disease and you're talking</p> <p>9 about the population of valve heart</p> <p>10 disease, you're talking about the</p> <p>11 population that kills more Americans than</p> <p>12 any other disease, and both of which this</p> <p>13 particular patent had a potential to impact</p> <p>14 on the way those patients were treated to</p> <p>15 improve their outcomes which then would</p> <p>16 allow surgeons to have different approaches</p> <p>17 that could be safer for the patient and</p> <p>18 have better and produce better outcomes.</p> <p>19 <b>Q. Did anyone ever do a market study</b></p> <p>20 <b>for Quickie defining the market, what the</b></p> <p>21 <b>costs were, what the economics of</b></p> <p>22 <b>production would be if this patent were</b></p> <p>23 <b>actually put into a product that was</b></p> <p>24 <b>manufactured?</b></p> <p>25 A. Well, Quickie -- again, we're a</p>
<p style="text-align: right;">Page 147</p> <p>1 A. Galloway</p> <p>2 heart surgery, therefore lower the</p> <p>3 morbidity risk to the patient and improve</p> <p>4 outcomes.</p> <p>5 That was the manifestation of the</p> <p>6 technology that we initially licensed to</p> <p>7 Medtronic to develop that aspect of the</p> <p>8 technology.</p> <p>9 Then there are other potential</p> <p>10 uses, but I won't --</p> <p>11 <b>Q. That sounds like the benefits to</b></p> <p>12 <b>the end user, in other words, the user of</b></p> <p>13 <b>the product. What are the particular</b></p> <p>14 <b>benefits to the manufacturer of the</b></p> <p>15 <b>product?</b></p> <p>16 A. Well, in anything -- anything</p> <p>17 that ultimately benefits the patient, any</p> <p>18 medical device that improves outcomes on a</p> <p>19 patient is going to change or has the</p> <p>20 potential to dramatically change the way</p> <p>21 that health care is delivered.</p> <p>22 So you start with the potential</p> <p>23 for benefit to the patient, and if that</p> <p>24 potential is strong enough then there is a</p> <p>25 huge market value for that because that</p>	<p style="text-align: right;">Page 149</p> <p>1 A. Galloway</p> <p>2 small group, four, five guys, so we</p> <p>3 couldn't afford to do that sort of market</p> <p>4 assessment ourselves.</p> <p>5 Certainly related to the valvular</p> <p>6 aspects, that one narrow part, and it</p> <p>7 covered more than that, that one narrow</p> <p>8 part of the invention, the part of the</p> <p>9 invention that related to ease of</p> <p>10 implementation of aortic valves that would</p> <p>11 cut time, potentially cut a substantial</p> <p>12 amount of away from aortic valves.</p> <p>13 I'm fairly certain, and although</p> <p>14 I haven't completely seen every specific</p> <p>15 one out there, I'm fairly certain that</p> <p>16 Medtronic did an analysis of the impact of</p> <p>17 that on market share and then factored that</p> <p>18 number into the initial development</p> <p>19 agreement price that we were, and the</p> <p>20 initial licensing and developing agreement</p> <p>21 that we signed with them and the potential</p> <p>22 amount of patent royalties that they would</p> <p>23 be able to payout based upon how that would</p> <p>24 impact their version of market share.</p> <p>25 <b>Q. So Quickie didn't do that itself,</b></p>



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<p style="text-align: right;">Page 150</p> <p>1 A. Galloway</p> <p>2 correct?</p> <p>3 A. Medtronic did that analysis.</p> <p>4 <b>Q. So the answer is that Quickie</b></p> <p>5 <b>didn't do it itself, Quickie did not do a</b></p> <p>6 <b>market analysis, cost analysis, an economic</b></p> <p>7 <b>analysis on its own?</b></p> <p>8 A. On our own Quickie did not do</p> <p>9 that.</p> <p>10 <b>Q. You believe that Medtronic did</b></p> <p>11 <b>it, is that what you're saying?</b></p> <p>12 MR. DIAMOND: I'm also going to</p> <p>13 say, object only to the extent, I'm</p> <p>14 looking for a definition of Quickie.</p> <p>15 If Quickie also includes Quickie's</p> <p>16 experts, I don't know whether the</p> <p>17 answer would be the same or not.</p> <p>18 BY MR. KAMINSKY:</p> <p>19 <b>Q. Well, what I'm talking about is</b></p> <p>20 <b>when you were out trying to market the</b></p> <p>21 <b>device and when you made your efforts too</b></p> <p>22 <b>get people interested in it, as of that</b></p> <p>23 <b>time Quickie had not done a market</b></p> <p>24 <b>analysis, an economic analysis, a financial</b></p> <p>25 <b>analysis on its own, is that correct?</b></p>	<p style="text-align: right;">Page 152</p> <p>1 A. Galloway</p> <p>2 a significant number of people in the field</p> <p>3 of use that they owned and had bought from</p> <p>4 us after, but after they had terminated</p> <p>5 their agreement with us.</p> <p>6 <b>Q. But you were not marketing a</b></p> <p>7 <b>device, you were marketing the patent and</b></p> <p>8 <b>the rights to use whatever the patent</b></p> <p>9 <b>covered, is that correct?</b></p> <p>10 MR. DIAMOND: You being Quickie.</p> <p>11 BY MR. KAMINSKY:</p> <p>12 <b>Q. You being Quickie, and by Quickie</b></p> <p>13 <b>let me broaden this, the Colvin Galloway</b></p> <p>14 <b>companies, entities.</b></p> <p>15 A. Well, there is no Colvin Galloway</p> <p>16 companies again. I mean, that's not</p> <p>17 exactly true. There is an S&amp;A Rings</p> <p>18 company that is very specific, I don't</p> <p>19 think we're talking about that, there is</p> <p>20 a -- which really is Steven &amp; Aubrey,</p> <p>21 that's what that means, Steve &amp; Aubrey,</p> <p>22 it's a pretty small company.</p> <p>23 There is a Quickie company,</p> <p>24 Quickie, LLC that had the '160 Patent, it</p> <p>25 also had the '243 Patent that relates to</p>
<p style="text-align: right;">Page 151</p> <p>1 A. Galloway</p> <p>2 A. When we began to market the</p> <p>3 device to a company we marketed the device</p> <p>4 as our perceived impact on outcomes and how</p> <p>5 that would potentially shift market share,</p> <p>6 and they then made their business decisions</p> <p>7 based upon potential for market shares my</p> <p>8 understanding. But we didn't do that</p> <p>9 analysis related to market share ourselves</p> <p>10 within Quickie.</p> <p>11 <b>Q. Just to be clear, you didn't</b></p> <p>12 <b>market the device, you were marketing the</b></p> <p>13 <b>patent, is that right? You were trying to</b></p> <p>14 <b>license the patent, isn't that correct? No</b></p> <p>15 <b>one has ever developed, actually produced</b></p> <p>16 <b>and put on the market a device itself, have</b></p> <p>17 <b>they?</b></p> <p>18 A. We licensed the idea, the idea,</p> <p>19 and we had intellectual property to protect</p> <p>20 the patent and we had a patent that was</p> <p>21 patent protected intellectual property,</p> <p>22 only idea. We licensed that to Medtronic.</p> <p>23 Medtronic in our opinion</p> <p>24 subsequently infringed on that patent and</p> <p>25 used that idea and marketed and sold it to</p>	<p style="text-align: right;">Page 153</p> <p>1 A. Galloway</p> <p>2 ways to ease the attachment of devices to</p> <p>3 facilitate surgery and we have attempted to</p> <p>4 license those, that property, that</p> <p>5 intellectual property to companies for</p> <p>6 subsequent development and potential</p> <p>7 market.</p> <p>8 <b>Q. Okay.</b></p> <p>9 <b>So all I'm trying to clarify is</b></p> <p>10 <b>that what you were trying to market to</b></p> <p>11 <b>people was the use of your patent. That's</b></p> <p>12 <b>what you were going out to people to say,</b></p> <p>13 <b>you should sign a contract with us so you</b></p> <p>14 <b>get the rights to use our patent, correct?</b></p> <p>15 A. Correct.</p> <p>16 <b>Q. You, yourself, had not developed</b></p> <p>17 <b>a device, correct?</b></p> <p>18 MR. DIAMOND: Again, you being</p> <p>19 Quickie?</p> <p>20 BY MR. KAMINSKY:</p> <p>21 <b>Q. You being Quickie, and the only</b></p> <p>22 <b>reason I used the broader term is because I</b></p> <p>23 <b>don't want to miss something if there was</b></p> <p>24 <b>someone else who was doing it for you, by</b></p> <p>25 <b>all means tell me.</b></p>

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<p style="text-align: right;">Page 154</p> <p>1 A. Galloway</p> <p>2 But again, when I use the word</p> <p>3 you, I'm talking about Quickie or anybody</p> <p>4 acting on Quickie's behalf.</p> <p>5 So my question is, you, Quickie,</p> <p>6 did not actually develop a device, is that</p> <p>7 correct?</p> <p>8 A. That's correct, it was never the</p> <p>9 intent of Quickie to develop or manufacture</p> <p>10 a device within Quickie.</p> <p>11 <b>Q. Now -- and you, Quickie, again on</b></p> <p>12 <b>your own, did not do or commission when you</b></p> <p>13 <b>were out trying to market the patent a</b></p> <p>14 <b>market study, a projection of revenue, any</b></p> <p>15 <b>sort of financial or analysis or analysis</b></p> <p>16 <b>of that type, is that correct?</b></p> <p>17 A. That's correct.</p> <p>18 <b>Q. Now, you did go to Medtronic, is</b></p> <p>19 <b>that right?</b></p> <p>20 A. Correct.</p> <p>21 <b>Q. And you did have a license with</b></p> <p>22 <b>Medtronic for a period of time as we</b></p> <p>23 <b>established, correct?</b></p> <p>24 A. Correct.</p> <p>25 <b>Q. You said you believed that</b></p>	<p style="text-align: right;">Page 156</p> <p>1 A. Galloway</p> <p>2 A. Well, we went to -- at that time</p> <p>3 you're referring to, meaning the time that</p> <p>4 we went to U.S. Surgical and Ethicon, to my</p> <p>5 recollection the cardiovascular uses aspect</p> <p>6 of the '160 Patent were tied up with</p> <p>7 Medtronic.</p> <p>8 So we felt that was the most</p> <p>9 valuable aspects of the '160 Patent. But</p> <p>10 there were other potential uses for</p> <p>11 non-cardiac use of the '160 Patent, like</p> <p>12 gastrointestinal surgery, neurosurgery,</p> <p>13 things such as that -- and since Ethicon</p> <p>14 and U.S. Surgical produced products related</p> <p>15 to those potential manifestations of the</p> <p>16 patent, we went to speak with them.</p> <p>17 It was my recollection that they</p> <p>18 were not interested unless they could have</p> <p>19 all the aspects of the 160 patent which</p> <p>20 were the cardiovascular to the '160 Patent,</p> <p>21 which were tied up at the time with</p> <p>22 Medtronic, so we couldn't offer that.</p> <p>23 <b>Q. Both U.S. Surgical and Ethicon</b></p> <p>24 <b>declined to enter into a licensing</b></p> <p>25 <b>agreement with Quickie, is that correct?</b></p>
<p style="text-align: right;">Page 155</p> <p>1 A. Galloway</p> <p>2 Medtronic did some form of a market or</p> <p>3 economic analysis, is that right?</p> <p>4 A. They indicated to me that they</p> <p>5 did, yes.</p> <p>6 <b>Q. Did you ever see that market or</b></p> <p>7 <b>economic analysis?</b></p> <p>8 A. No.</p> <p>9 <b>Q. Was one of produced in the course</b></p> <p>10 <b>of the Medtronic litigation, to the best of</b></p> <p>11 <b>your knowledge?</b></p> <p>12 A. To the best of my knowledge, none</p> <p>13 was, there was no internal analysis of the</p> <p>14 value of the patent related to valve</p> <p>15 surgery produced within the litigation</p> <p>16 against Medtronic.</p> <p>17 <b>Q. Now, you also went to some other</b></p> <p>18 <b>companies at that time, that's when you</b></p> <p>19 <b>went to Medtronic, including U.S. Surgical</b></p> <p>20 <b>and Ethicon -- is that the correct</b></p> <p>21 <b>pronunciation?</b></p> <p>22 A. That's correct.</p> <p>23 <b>Q. Did you ever -- and they chose</b></p> <p>24 <b>not to license the product, is that right,</b></p> <p>25 <b>or license the patent, is that right?</b></p>	<p style="text-align: right;">Page 157</p> <p>1 A. Galloway</p> <p>2 A. Correct.</p> <p>3 <b>Q. And other than Quickie and</b></p> <p>4 <b>Medtronic, no one else has entered into a</b></p> <p>5 <b>license agreement with Quickie or -- strike</b></p> <p>6 <b>that.</b></p> <p>7 <b>Other than Medtronic, no one else</b></p> <p>8 <b>entered into a license agreement with</b></p> <p>9 <b>Quickie before the patent expired, is that</b></p> <p>10 <b>correct?</b></p> <p>11 A. That's correct.</p> <p>12 <b>Q. After Medtronic terminated the</b></p> <p>13 <b>agreement with Quickie, did you go back to</b></p> <p>14 <b>U.S. Surgical and Ethicon to see if they</b></p> <p>15 <b>would license the patent at that time?</b></p> <p>16 A. No. At that time we wanted to go</p> <p>17 back and focus on valve technologies. So</p> <p>18 the next thing we did is we went back and</p> <p>19 developed another licensing agreement,</p> <p>20 again with Medtronic, believe it or not,</p> <p>21 but without the use of the '160 Patent, but</p> <p>22 in the need of use for valve attachment</p> <p>23 that we wanted to use the '160 Patent, and</p> <p>24 that agreement with Medtronic precluded us</p> <p>25 from developing anything with any other</p>

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<p style="text-align: right;">Page 158</p> <p>1 A. Galloway</p> <p>2 cardiovascular device companies as long as</p> <p>3 we were under that next potential license</p> <p>4 agreement with Medtronic, which went for</p> <p>5 about a year to a year and a half.</p> <p>6 In that development we then got</p> <p>7 to a point where they decided it was not</p> <p>8 economically feasible to go to market with</p> <p>9 the invention that we were producing,</p> <p>10 released us from that agreement, which then</p> <p>11 freed us again to go use the '160 Patent,</p> <p>12 and I think by that time our '243 Patent to</p> <p>13 work with other players in the valve</p> <p>14 technology realm, just where we were at</p> <p>15 that time going to focus.</p> <p>16 So we then subsequently went to</p> <p>17 St. Jude to potentially do a valve</p> <p>18 attachment development agreement with them</p> <p>19 to encompass the potentially the 160 and</p> <p>20 the 243.</p> <p>21 We then subsequently found that</p> <p>22 the 160 was lapsed. Those negotiations</p> <p>23 fell apart.</p> <p>24 Then we've subsequently gone to</p> <p>25 Edwards Life Sciences and we don't have the</p>	<p style="text-align: right;">Page 160</p> <p>1 A. Galloway</p> <p>2 effort after Medtronic terminated its</p> <p>3 license agreement with you to go back to</p> <p>4 U.S. Surgical or Ethicon to see if they</p> <p>5 would then become interested in the '160</p> <p>6 Patent, is that correct?</p> <p>7 A. That's correct.</p> <p>8 <b>Q. Did you go to anyone else after</b></p> <p>9 <b>Medtronic terminated the license and before</b></p> <p>10 <b>you learned that the '160 Patent had been</b></p> <p>11 <b>abandoned or deemed abandoned or expired</b></p> <p>12 <b>besides St. Jude to see if you could do a</b></p> <p>13 <b>license that would cover the '160 Patent?</b></p> <p>14 A. No one else other than those</p> <p>15 previously indicated.</p> <p>16 <b>Q. Is St. Jude interested in the</b></p> <p>17 <b>'243 Patent?</b></p> <p>18 A. They were less interested in the</p> <p>19 '243 Patent.</p> <p>20 <b>Q. Is there written correspondence</b></p> <p>21 <b>with St. Jude of any nature that explains</b></p> <p>22 <b>why St. Jude passed on the '243 Patent?</b></p> <p>23 A. Not to my recollection.</p> <p>24 <b>Q. Is there written correspondence</b></p> <p>25 <b>with St. Jude that discusses the fact that</b></p>
<p style="text-align: right;">Page 159</p> <p>1 A. Galloway</p> <p>2 160 attachment part of the IP, but for</p> <p>3 other ideas that we have are now signing a</p> <p>4 development agreement with them. But that</p> <p>5 agreement will require that Quickie, LLC</p> <p>6 transfer the '243 Patent over to the new</p> <p>7 entity that will work with Edwards.</p> <p>8 <b>Q. So you may be entering into a</b></p> <p>9 <b>license with Edwards for the '243 Patent,</b></p> <p>10 <b>correct?</b></p> <p>11 A. I think that the technical way</p> <p>12 it's going to work is that we formed a new</p> <p>13 company that will buy the '243 Patent from</p> <p>14 Quickie, LLC and that new company will then</p> <p>15 license that patent and enter into the</p> <p>16 development agreement with Edward.</p> <p>17 <b>Q. And you've been able to do that</b></p> <p>18 <b>notwithstanding the expiration of the '160</b></p> <p>19 <b>Patent, correct?</b></p> <p>20 A. I was able to do it, but it would</p> <p>21 have helped if we have the '160 Patent.</p> <p>22 <b>Q. But you've been able to do it,</b></p> <p>23 <b>correct?</b></p> <p>24 A. Correct.</p> <p>25 <b>Q. Now, in fact, you didn't make any</b></p>	<p style="text-align: right;">Page 161</p> <p>1 A. Galloway</p> <p>2 the '160 Patent had expired?</p> <p>3 A. Not to my recollection.</p> <p>4 <b>Q. Now, the '160 Patent's expiration</b></p> <p>5 <b>means that that technology or information</b></p> <p>6 <b>is available to anyone in the marketplace</b></p> <p>7 <b>at this time, is that right?</b></p> <p>8 MR. DIAMOND: Objection to form.</p> <p>9 Calls for a legal conclusion.</p> <p>10 BY MR. KAMINSKY:</p> <p>11 <b>Q. What do you understand to be the</b></p> <p>12 <b>effect of the expiration of the '160 Patent</b></p> <p>13 <b>in terms of the ability of the market to</b></p> <p>14 <b>use whatever was covered by that patent?</b></p> <p>15 A. My understanding is that it's not</p> <p>16 covered under intellectual property patent</p> <p>17 law and therefore other people in the</p> <p>18 market could potentially use that</p> <p>19 technology.</p> <p>20 <b>Q. Is anyone currently marketing a</b></p> <p>21 <b>device that does what the '160 Patent</b></p> <p>22 <b>covered, as far as you know?</b></p> <p>23 A. Absolutely. Medtronic still</p> <p>24 continues to produce the auto suture device</p> <p>25 for off-pump valve surgery -- excuse me,</p>

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<p style="text-align: right;">Page 162</p> <p>1 A. Galloway</p> <p>2 for off-pump coronary bypass surgery,</p> <p>3 similar to what was described during the</p> <p>4 Markman Hearing and was evaluated by</p> <p>5 experts that we had at that time. They</p> <p>6 continued to produce that in a field that</p> <p>7 continues to grow market shares</p> <p>8 significantly in the area of coronary</p> <p>9 bypass surgery.</p> <p>10 It was our understanding also</p> <p>11 that Guidant also is using a device that</p> <p>12 also is an infringement of the embodiments</p> <p>13 of our patent for their off-pump surgery</p> <p>14 platform.</p> <p>15 Those platforms are not just</p> <p>16 U.S., they're worldwide platforms, and</p> <p>17 resulted in a significant shift in the type</p> <p>18 of technology that's used for coronary</p> <p>19 bypass surgery.</p> <p>20 <b>Q. Do you know the names of the</b></p> <p>21 <b>products that those companies are using</b></p> <p>22 <b>that you say would have been infringing on</b></p> <p>23 <b>your '160 Patent had it not expired?</b></p> <p>24 A. Yes. The, we call floating cam</p> <p>25 embodiment of the '160 Patent is the</p>	<p style="text-align: right;">Page 164</p> <p>1 A. Galloway</p> <p>2 believe, called their off-pump platform</p> <p>3 which includes an octabase,</p> <p>4 O-C-T-A-B-A-S-E, which is a base retractor</p> <p>5 which specifically uses the floating cam</p> <p>6 mechanism within that retractor as well as</p> <p>7 associated technology, all of which</p> <p>8 together is a composite, allows surgeons to</p> <p>9 do the off pump surgery.</p> <p>10 In the Guidant system, I don't</p> <p>11 know the specific name of it, but it's also</p> <p>12 the similar auto attachment mechanism in</p> <p>13 the base of their retractor system, which</p> <p>14 is built into their retractor system, which</p> <p>15 is their platform for off-pump.</p> <p>16 <b>Q. Now, you are a cardiac surgeon,</b></p> <p>17 <b>is that right?</b></p> <p>18 A. Correct.</p> <p>19 <b>Q. Do you use either of these</b></p> <p>20 <b>devices in your surgery?</b></p> <p>21 A. Yes, I use the Medtronic version</p> <p>22 of this device.</p> <p>23 <b>Q. Does the device that would be</b></p> <p>24 <b>covered by patent have anything to do with</b></p> <p>25 <b>the product that would be used as an</b></p>
<p style="text-align: right;">Page 163</p> <p>1 A. Galloway</p> <p>2 embodiment of the patent that was used in</p> <p>3 the October at that-based platform for the</p> <p>4 entire October at that system, which is</p> <p>5 their system for off-pump coronary bypass</p> <p>6 surgery, and the Guidant base that has an</p> <p>7 auto suturing mechanism is also in our</p> <p>8 opinion an infringement of the embodiment</p> <p>9 of the patent.</p> <p>10 <b>Q. Is there any other name for that,</b></p> <p>11 <b>for either of those products?</b></p> <p>12 A. They're the mechanism for auto</p> <p>13 securing of sutures onto the base of the</p> <p>14 retractor in the off-pump system.</p> <p>15 <b>Q. Now, if they go to the market,</b></p> <p>16 <b>which I take it's doctors, is that who</b></p> <p>17 <b>they would -- or hospitals, who would be</b></p> <p>18 <b>the market for these products?</b></p> <p>19 A. Cardiac surgeons.</p> <p>20 <b>Q. They go to a cardiac surgeon.</b></p> <p>21 <b>What name do they give to the product that</b></p> <p>22 <b>they say they're going to offer you as a</b></p> <p>23 <b>cardiac surgeon that Quickie contends would</b></p> <p>24 <b>have infringed the '160 Patent?</b></p> <p>25 A. The Medtronic system is, I</p>	<p style="text-align: right;">Page 165</p> <p>1 A. Galloway</p> <p>2 external holder of sutures?</p> <p>3 A. I guess it could be used as an</p> <p>4 external holder of sutures. It's a</p> <p>5 mechanism for auto securing sutures and</p> <p>6 there's various mechanisms to do that, but</p> <p>7 it can be used as an external surer of</p> <p>8 sutures.</p> <p>9 <b>Q. Are you aware of anyone using it</b></p> <p>10 <b>in that manner now at this time?</b></p> <p>11 A. Well, again, I think, and it's a</p> <p>12 matter of semantics, the octabase portion</p> <p>13 of the off-pump system is really external,</p> <p>14 it's not -- we're in the chest, but it's</p> <p>15 external to the body, it's not</p> <p>16 intravascular use.</p> <p>17 It's a system that's placed on</p> <p>18 the chest that allows the auto securing and</p> <p>19 placement and tractional systems that will</p> <p>20 have an impact on the heart for positioning</p> <p>21 that then allows the surgeon to continue to</p> <p>22 do the surgery without having to go on the</p> <p>23 heart lung machine.</p> <p>24 So, technically, it is external,</p> <p>25 not being intravascular, and it's not</p>

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<p style="text-align: right;">Page 166</p> <p>1 A. Galloway</p> <p>2 implantable, it's not left in, it's used</p> <p>3 for the surgery and taken away.</p> <p>4 <b>Q. But that's not what you normally</b></p> <p>5 <b>refer to as an external holder of sutures,</b></p> <p>6 <b>is it?</b></p> <p>7 A. Well, as a cardiac surgeon that's</p> <p>8 what we refer to it as. We externally hold</p> <p>9 sutures to, for retraction. Internal would</p> <p>10 be inside the heart or inside the blood</p> <p>11 vessel.</p> <p>12 <b>Q. Have you ever seen anyone to this</b></p> <p>13 <b>day, including your expert do a forecast of</b></p> <p>14 <b>the size of the market for the patent</b></p> <p>15 <b>technology that would have been covered by</b></p> <p>16 <b>the '160 Patent?</b></p> <p>17 MR. DIAMOND: And let me just say</p> <p>18 he's asking what you've seen as part</p> <p>19 of that question with respect to</p> <p>20 experts.</p> <p>21 To the extent you haven't,</p> <p>22 doesn't mean the expert has done it,</p> <p>23 and he will get an appropriate report.</p> <p>24 BY MR. KAMINSKY:</p> <p>25 <b>Q. I'm trying to see whether you've</b></p>	<p style="text-align: right;">Page 168</p> <p>1 A. Galloway</p> <p>2 <b>Q. Are you talking about a report by</b></p> <p>3 <b>Mark Berman, is that right?</b></p> <p>4 A. I don't know.</p> <p>5 <b>Q. Are you sure that wasn't done by,</b></p> <p>6 <b>you know, during the Thelen period when</b></p> <p>7 <b>they were running the Medtronic case after</b></p> <p>8 <b>Greenberg had already been replaced?</b></p> <p>9 A. I can't be sure of that.</p> <p>10 <b>Q. But in any event, you're</b></p> <p>11 <b>referring to an expert report done for</b></p> <p>12 <b>Quickie in connection with the Medtronic</b></p> <p>13 <b>lawsuit, is that right?</b></p> <p>14 A. I'm referring to an expert</p> <p>15 opinion that was done for Quickie at the</p> <p>16 request of our counsel, whoever it was at</p> <p>17 the time, in response to that, at the time</p> <p>18 or shortly after the Markman ruling to</p> <p>19 assess damages.</p> <p>20 <b>Q. But in connection with the</b></p> <p>21 <b>Medtronic case?</b></p> <p>22 A. In connection with the Medtronic</p> <p>23 case.</p> <p>24 <b>Q. Has Quickie itself ever done any</b></p> <p>25 <b>market research with respect to the '160</b></p>
<p style="text-align: right;">Page 167</p> <p>1 A. Galloway</p> <p>2 seen such an analysis as you sit here</p> <p>3 today, June 12, 2008.</p> <p>4 A. Yes, yes.</p> <p>5 <b>Q. Whose did you see?</b></p> <p>6 A. So again, it was back to the</p> <p>7 question you asked me earlier, I don't</p> <p>8 remember the name of the person. It was</p> <p>9 the analysis done as the expert at the</p> <p>10 request of Greenberg Taurig in the</p> <p>11 infringement lawsuit against Medtronic at</p> <p>12 that time, which was I think 2004 roughly</p> <p>13 for just that embodiment of the patent, and</p> <p>14 it's my recollection that there was 7 to</p> <p>15 \$10 million estimate of market value at</p> <p>16 that time by that expert and, for that</p> <p>17 embodiment of this patent.</p> <p>18 And beyond that, I don't know</p> <p>19 what's transpired since then.</p> <p>20 <b>Q. Are you sure that was done by,</b></p> <p>21 <b>you know, by an expert for Greenberg</b></p> <p>22 <b>Taurig at the time of the Markman Hearing?</b></p> <p>23 A. I'm not 100 percent sure. It was</p> <p>24 done at the time of the Markman Hearing, I</p> <p>25 know that.</p>	<p style="text-align: right;">Page 169</p> <p>1 A. Galloway</p> <p>2 Patent? I think that's probably covered by</p> <p>3 my prior questions, but I just want to make</p> <p>4 clear that market research is not in your</p> <p>5 mind something different than the kind of</p> <p>6 analysis I was talking about before.</p> <p>7 A. No.</p> <p>8 <b>Q. Now, I think you've told me this</b></p> <p>9 <b>before, but I just want to see if I'm</b></p> <p>10 <b>correct. If you've said it before, you can</b></p> <p>11 <b>just say it's in my prior answer.</b></p> <p>12 <b>What is your understanding of why</b></p> <p>13 <b>U.S. Surgical and Ethicon declined it take</b></p> <p>14 <b>a license in the '160 Patent?</b></p> <p>15 A. Again, I believe that was in my</p> <p>16 prior answer.</p> <p>17 <b>Q. Okay.</b></p> <p>18 <b>Did Quickie develop any internal</b></p> <p>19 <b>licensing procedures or policies in writing</b></p> <p>20 <b>rather than orally? In other words, did</b></p> <p>21 <b>you at any time when the '160 Patent was</b></p> <p>22 <b>extant have any set of written procedures</b></p> <p>23 <b>or policies for licensing the product?</b></p> <p>24 A. I don't believe so.</p> <p>25 <b>Q. What royalty rate did Quickie</b></p>

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<p style="text-align: right;">Page 170</p> <p>1 A. Galloway</p> <p>2 believe was the appropriate royalty rate</p> <p>3 for a license of the '160 Patent?</p> <p>4 A. I believe the royalty rate that</p> <p>5 we agreed upon was a 6 percent royalty</p> <p>6 rate.</p> <p>7 <b>Q. What factors did Quickie consider</b></p> <p>8 <b>in determining what the appropriate royalty</b></p> <p>9 <b>rate should be?</b></p> <p>10 MR. DIAMOND: At what point in</p> <p>11 time are we talking here?</p> <p>12 MR. KAMINSKY: Prior to the</p> <p>13 expiration of the patent whenever he</p> <p>14 was attempting to license the patent</p> <p>15 to anyone.</p> <p>16 A. Well, I think the 6 percent is at</p> <p>17 least in our experience had been the going</p> <p>18 rate of a royalty for an idea that you had</p> <p>19 sole intellectual property to and they felt</p> <p>20 could be a substantial part of a device or</p> <p>21 system.</p> <p>22 So I think that met that criteria</p> <p>23 and I think that's what was agreed to by</p> <p>24 Medtronic because they thought they had met</p> <p>25 that criteria.</p>	<p style="text-align: right;">Page 172</p> <p>1 A. Galloway</p> <p>2 it was a similar template that we developed</p> <p>3 for the Quickie device '160 Patent.</p> <p>4 <b>Q. Are you getting a 6 percent</b></p> <p>5 <b>royalty in your arrangement for the '243</b></p> <p>6 <b>Patent with Edwards?</b></p> <p>7 A. The Edwards arrangement is, they</p> <p>8 figure royalties in a completely different</p> <p>9 way. So the answer is no, they figure it a</p> <p>10 completely different way, but it's roughly</p> <p>11 equivalent it that.</p> <p>12 <b>Q. Is it correct that you offered</b></p> <p>13 <b>some of the potential licensees a 4 percent</b></p> <p>14 <b>royalty or something less than a 6 percent</b></p> <p>15 <b>royalty?</b></p> <p>16 A. If you don't feel you have -- we</p> <p>17 may have, I don't know what you're</p> <p>18 referring to specifically, but as a general</p> <p>19 rule if we have covered intellectual</p> <p>20 property for an idea it would be a 6</p> <p>21 percent royalty.</p> <p>22 If we had either not all</p> <p>23 embodiments of the patents, so if we were</p> <p>24 restricted, or if that -- or if the device</p> <p>25 would have to be hybrid with another</p>
<p style="text-align: right;">Page 171</p> <p>1 A. Galloway</p> <p>2 <b>Q. What did you review to determine</b></p> <p>3 <b>that that was a going rate for this kind of</b></p> <p>4 <b>a royalty?</b></p> <p>5 A. Well, we had a, let's just say we</p> <p>6 had in a different system all together.</p> <p>7 The S&amp;A Rings company had an issued patent</p> <p>8 or applied for a patent that was likely to</p> <p>9 be issued on an angioplasty device, and at</p> <p>10 least the way they wrote that initial</p> <p>11 agreement, which is our first major</p> <p>12 development agreement with the company was</p> <p>13 that they would give, they would assign a 6</p> <p>14 percent royalty if you ultimately had an</p> <p>15 executed patent that was in place at the</p> <p>16 time of production or once that patent was</p> <p>17 in place then the royalty would be 6</p> <p>18 percent -- and in least in that agreement</p> <p>19 then the royalty prior to issuance would be</p> <p>20 smaller rate, and if you didn't get</p> <p>21 issuance of a patent but they still</p> <p>22 continued with the product then it would be</p> <p>23 a smaller rate.</p> <p>24 So based upon that negotiation in</p> <p>25 the past, we used that as our template and</p>	<p style="text-align: right;">Page 173</p> <p>1 A. Galloway</p> <p>2 technology, we might decide to go to a</p> <p>3 lesser royalty rate to have to go ahead and</p> <p>4 produce the patent because we might make</p> <p>5 the decision that that was the best way to</p> <p>6 get to market and without other technology</p> <p>7 we also couldn't get to market, so we might</p> <p>8 negotiate down the royalty rate.</p> <p>9 <b>Q. Did you ever get if your</b></p> <p>10 <b>negotiations with U.S. Surgical to a point</b></p> <p>11 <b>where you discussed a potential royalty</b></p> <p>12 <b>rate?</b></p> <p>13 A. I think U.S. Surgical and</p> <p>14 Ethicon, again once, we got beyond the</p> <p>15 point that we didn't have cardiovascular</p> <p>16 usage, I don't recall that we ever got to</p> <p>17 any particular point on royalty rate</p> <p>18 because they would have wanted</p> <p>19 cardiovascular usage.</p> <p>20 So I'm not aware that we got</p> <p>21 this, we could have, but I don't remember</p> <p>22 specifically.</p> <p>23 <b>Q. With either U.S. Surgical or</b></p> <p>24 <b>Ethicon, is that right?</b></p> <p>25 A. Correct.</p>



45 (Pages 174 to 177)

<p style="text-align: right;">Page 174</p> <p>1 A. Galloway</p> <p>2 <b>Q. Did Quickie develop an internal</b></p> <p>3 <b>business plan with respect to the '160</b></p> <p>4 <b>Patent?</b></p> <p>5 A. No.</p> <p>6 <b>Q. Did Quickie assign any particular</b></p> <p>7 <b>person within Quickie to do any analysis of</b></p> <p>8 <b>how the invention might be monetized, that</b></p> <p>9 <b>is the invention that's covered by the '160</b></p> <p>10 <b>Patent?</b></p> <p>11 A. Well, I think the value of the</p> <p>12 patent to the company, I think the method</p> <p>13 we used to articulate what we thought the</p> <p>14 value of the patent was to the companies</p> <p>15 was myself and Dr. Colvin's articulation</p> <p>16 about how we articulated this would be used</p> <p>17 in the market.</p> <p>18 As we explained the potential</p> <p>19 usage of the patent and potential patient</p> <p>20 benefits, that has certain implications on</p> <p>21 market share and that's -- since we were</p> <p>22 considered experts in the field, that's the</p> <p>23 methodology that we used to negotiate</p> <p>24 potential market impact and royalty rates</p> <p>25 rather than a formal business plan.</p>	<p style="text-align: right;">Page 176</p> <p>1 A. Galloway</p> <p>2 be applied to the tissue, and that required</p> <p>3 the embodiment of the patent that we</p> <p>4 presented, which was one of the novel parts</p> <p>5 of it.</p> <p>6 So you couldn't do the same thing</p> <p>7 with a hemostat or a coil, we just held the</p> <p>8 sutures out of the way, that wasn't the</p> <p>9 point. You could, in fact, even attach the</p> <p>10 suture tightly enough to secure a valve</p> <p>11 against the force of contractility or to</p> <p>12 secure, to displace the heart so we could</p> <p>13 do surgery. So that's a completely</p> <p>14 different thing. It wasn't the same.</p> <p>15 <b>Q. What about elongated flexible</b></p> <p>16 <b>plastic with overlapping ends?</b></p> <p>17 A. I'm not familiar with what that's</p> <p>18 used for.</p> <p>19 <b>Q. How about retention bars made of</b></p> <p>20 <b>a pliable material?</b></p> <p>21 A. Again, retention bars are for a</p> <p>22 completely different thing.</p> <p>23 Retention bars are something</p> <p>24 related to often coils that will just hold</p> <p>25 sutures out of the way in a quasi temporary</p>
<p style="text-align: right;">Page 175</p> <p>1 A. Galloway</p> <p>2 <b>Q. Now, prior to the invention that</b></p> <p>3 <b>was covered by the '160 Patent, what</b></p> <p>4 <b>methods were used for suturing in hard</b></p> <p>5 <b>surgery or the kind of surgery in which the</b></p> <p>6 <b>'160 Patent might be used?</b></p> <p>7 A. Prior to that time, the vast</p> <p>8 majority of attachment techniques for</p> <p>9 medical devices have been through sutures</p> <p>10 and the surgeons tying knots with their</p> <p>11 fingers for the placement of those sutures</p> <p>12 and attachment of the device there did</p> <p>13 surgeons use hemostats or clamps.</p> <p>14 Not for the embodiments that we</p> <p>15 were talking about.</p> <p>16 <b>Q. How about coils of a helical</b></p> <p>17 <b>spring?</b></p> <p>18 A. Again, not for the embodiments</p> <p>19 that we're talking about. That's simply</p> <p>20 for holding out of the way, that was</p> <p>21 different and specifically for holding out</p> <p>22 of the way a suture for placement.</p> <p>23 But that's different than</p> <p>24 attaching under a certain degree of force a</p> <p>25 suture that will allow a certain force to</p>	<p style="text-align: right;">Page 177</p> <p>1 A. Galloway</p> <p>2 fashion, but not under a certain degree of</p> <p>3 force.</p> <p>4 So they're used for, if you will,</p> <p>5 organization of sutures, but not for actual</p> <p>6 retention sutures under force, my feeling</p> <p>7 of it.</p> <p>8 <b>Q. So that's another thing that you</b></p> <p>9 <b>feel is different than the '160 Patent, is</b></p> <p>10 <b>that right?</b></p> <p>11 A. Yeah.</p> <p>12 <b>Q. Okay.</b></p> <p>13 <b>What about devices for tensioning</b></p> <p>14 <b>and securing surgical tape around tapered</b></p> <p>15 <b>plugs?</b></p> <p>16 A. I think that would be different.</p> <p>17 <b>Q. And a suture organizer using</b></p> <p>18 <b>spring clips that is would be different?</b></p> <p>19 A. Different.</p> <p>20 <b>Q. Were the prior suture holders or</b></p> <p>21 <b>other suture holders by Guidant competitive</b></p> <p>22 <b>to what you were doing or what your patent</b></p> <p>23 <b>would be enabling people to do?</b></p> <p>24 A. You mean prior to our patent?</p> <p>25 <b>Q. Yes.</b></p>

46 (Pages 178 to 181)

<p style="text-align: right;">Page 178</p> <p>1 A. Galloway</p> <p>2 A. It was not my understanding they</p> <p>3 were, no.</p> <p>4 <b>Q. But they did have suture holders,</b></p> <p>5 <b>didn't they, Guidant did?</b></p> <p>6 A. I think they probably had some</p> <p>7 type of suture holder, yeah.</p> <p>8 <b>Q. Do you know what an obtrack</b></p> <p>9 <b>suture stay is?</b></p> <p>10 A. Not really.</p> <p>11 <b>Q. That was a product as we</b></p> <p>12 <b>understand is sold by one of Ethicon's</b></p> <p>13 <b>companies, Cardiovasculance?</b></p> <p>14 A. Uh-huh.</p> <p>15 <b>Q. You're not aware of that product?</b></p> <p>16 A. I'm aware of the company, but I'm</p> <p>17 not off the top of my head specifically</p> <p>18 aware of the product.</p> <p>19 <b>Q. S-T-O-C-K-I-N-E-T, what is a</b></p> <p>20 <b>stockinet?</b></p> <p>21 A. A stockinet is sometimes, they</p> <p>22 will use a sterile almost like a sock to</p> <p>23 help retract the heart itself during</p> <p>24 various parts to the procedure.</p> <p>25 <b>Q. What other methods are currently</b></p>	<p style="text-align: right;">Page 180</p> <p>1 A. Galloway</p> <p>2 to this, unless they tried to design around</p> <p>3 that after the lawsuit, which they may or</p> <p>4 may not have, I don't know for sure.</p> <p>5 <b>Q. Do you know in heart surgery</b></p> <p>6 <b>whether people are using methods that do</b></p> <p>7 <b>not infringe the '160 Patent at this time?</b></p> <p>8 A. Oh, I'm sure they are.</p> <p>9 <b>Q. And do you know whether the uses</b></p> <p>10 <b>that would infringe the '160 Patent are</b></p> <p>11 <b>more prevalent than the uses which are not?</b></p> <p>12 A. Well, it would be my impression</p> <p>13 that at least for the aspect of heart</p> <p>14 surgery termed off-pump surgery that the</p> <p>15 part of that system that I've previously</p> <p>16 spoken about which is the embodiment of the</p> <p>17 patent within the octabase or the</p> <p>18 embodiment of the patent within a base of a</p> <p>19 system by Guidant would infringe, and it's</p> <p>20 also my understanding or my belief that</p> <p>21 between the two of them they have the</p> <p>22 largest by far and away market share of</p> <p>23 off-pump cardiac surgery, and specifically</p> <p>24 I think Medtronic by launching that</p> <p>25 platform gained and has kept market share</p>
<p style="text-align: right;">Page 179</p> <p>1 A. Galloway</p> <p>2 available to doctors to do what the '160</p> <p>3 Patent does without infringing the '160</p> <p>4 Patent?</p> <p>5 A. I'm not sure I know the answer to</p> <p>6 that.</p> <p>7 <b>Q. Do you know which method of doing</b></p> <p>8 <b>what the '160 Patent would do is the most</b></p> <p>9 <b>prevalent method that's currently in use by</b></p> <p>10 <b>doctors?</b></p> <p>11 MR. DIAMOND: Generally, all</p> <p>12 applications?</p> <p>13 MR. KAMINSKY: Yes.</p> <p>14 MR. DIAMOND: Objection to the</p> <p>15 extent that it's outside of his</p> <p>16 expertise and experience, but go</p> <p>17 ahead.</p> <p>18 A. I guess I don't know</p> <p>19 specifically. I would still think since</p> <p>20 there is not yet an auto attachment valve</p> <p>21 in use yet that embodies that exact</p> <p>22 technology, that it's still likely one of</p> <p>23 the October at that base type of</p> <p>24 retractors, most likely still the Medtronic</p> <p>25 system unless, and I don't know the answer</p>	<p style="text-align: right;">Page 181</p> <p>1 A. Galloway</p> <p>2 leadership for off-pump surgery, and I</p> <p>3 don't know who is second beyond Medtronic.</p> <p>4 <b>Q. But as you've explained before,</b></p> <p>5 <b>you have never done a study of that, have</b></p> <p>6 <b>you?</b></p> <p>7 A. No.</p> <p>8 <b>Q. And you've never seen a study</b></p> <p>9 <b>yourself, that is you, yourself, seen a</b></p> <p>10 <b>study of that?</b></p> <p>11 A. I think I seen studies that show</p> <p>12 that Medtronic is the market share leader</p> <p>13 of off-pump bypass surgery, which I know</p> <p>14 that this is what we believe to be an</p> <p>15 infringement or a patent that was</p> <p>16 incorporated in that system that helped</p> <p>17 them capture that market share.</p> <p>18 So I have seen those data, but I</p> <p>19 haven't seen the specifics of the market</p> <p>20 study other than that they became the</p> <p>21 market leader in that area.</p> <p>22 <b>Q. Where have you seen such a study?</b></p> <p>23 A. I've seen that study in dealing</p> <p>24 with my dealings with a company called</p> <p>25 S-TEC, which we've done through our entity</p>



47 (Pages 182 to 185)

<p style="text-align: right;">Page 182</p> <p>1 A. Galloway</p> <p>2 E-Surge, a small development agreement with</p> <p>3 them non-related to that device or</p> <p>4 non-related to off-pump surgery.</p> <p>5 But as part of that relationship</p> <p>6 with them, they have strongly encouraged us</p> <p>7 to use their off-pump coronary bypass</p> <p>8 system and they've shown us that Medtronic</p> <p>9 is the market leader, but try to give us</p> <p>10 reasons why we should use their system</p> <p>11 instead, which we haven't done because we</p> <p>12 actually think the Medtronic products are a</p> <p>13 better product, but that's where I saw that</p> <p>14 information.</p> <p>15 <b>Q. Have you gone a copy of any such</b></p> <p>16 <b>study or information?</b></p> <p>17 A. No.</p> <p>18 <b>Q. Are you aware of any published</b></p> <p>19 <b>study that tells one what doctors are using</b></p> <p>20 <b>in relation to the type of product or</b></p> <p>21 <b>products that would have been covered by</b></p> <p>22 <b>the '160 Patent?</b></p> <p>23 A. I guess personally I'm not aware.</p> <p>24 MR. KAMINSKY: Give me two</p> <p>25 seconds.</p>	<p style="text-align: right;">Page 184</p> <p>1 A. Galloway</p> <p>2 for a legal conclusion.</p> <p>3 Also, when you say you, again, I</p> <p>4 have to clarify, I don't want to</p> <p>5 testify, but Dr. Colvin was aware of</p> <p>6 this in great detail on behalf of</p> <p>7 Quickie, so --</p> <p>8 MR. KAMINSKY: Well, just to</p> <p>9 clarify for this, since Dr. Colvin has</p> <p>10 passed away, we are assuming that</p> <p>11 Dr. Galloway is the testifying expert</p> <p>12 for Quickie and so I can't ask</p> <p>13 Dr. Colvin obviously.</p> <p>14 MR. DIAMOND: Certainly.</p> <p>15 MR. KAMINSKY: So I'm really</p> <p>16 asking him in that capacity.</p> <p>17 A. So as a representative of</p> <p>18 Quickie, I was aware that there was such a</p> <p>19 ruling and I think actually was made aware</p> <p>20 of that by Dr. Colvin, but I didn't really</p> <p>21 read that ruling and I haven't really seen</p> <p>22 this until now.</p> <p>23 <b>Q. Would you look at the third page</b></p> <p>24 <b>of the document, the page that's entitled,</b></p> <p>25 <b>"Office action and ex parte reexamination."</b></p>
<p style="text-align: right;">Page 183</p> <p>1 A. Galloway</p> <p>2 (Pause)</p> <p>3 BY MR. KAMINSKY:</p> <p>4 <b>Q. Let me show you a document that</b></p> <p>5 <b>we are marking 63.</b></p> <p>6 <b>(Exhibit 63, U.S. Patent and</b></p> <p>7 <b>Trademark Office decision, marked for</b></p> <p>8 <b>identification, as of this date.)</b></p> <p>9 <b>Q. Let me show you a document which</b></p> <p>10 <b>we're marking Exhibit 63. It is an action</b></p> <p>11 <b>taken by the U.S. Patent and Trademark</b></p> <p>12 <b>Office dated February 20, 2008 and</b></p> <p>13 <b>represents the decision on Medtronic's</b></p> <p>14 <b>request for re-examination of the '160</b></p> <p>15 <b>Patent.</b></p> <p>16 <b>Have you ever seen that before?</b></p> <p>17 A. No, I don't recall that I've seen</p> <p>18 this before.</p> <p>19 <b>Q. Are you aware that the U.S.</b></p> <p>20 <b>Patent and Trademark Office rendered a</b></p> <p>21 <b>decision that significantly narrowed the</b></p> <p>22 <b>'160 Patent from what had originally been</b></p> <p>23 <b>issued?</b></p> <p>24 MR. DIAMOND: Objection to form.</p> <p>25 Assumes facts not in evidence. Calls</p>	<p style="text-align: right;">Page 185</p> <p>1 A. Galloway</p> <p>2 Do you see that?</p> <p>3 Under part 2 where it says</p> <p>4 summary of action, do you see that under</p> <p>5 box 1A the decision of the Patent Office</p> <p>6 notices that claims 1 through 34 were the</p> <p>7 subject of a re-examination?</p> <p>8 A. Yes, I see that.</p> <p>9 <b>Q. And that's all of the claims that</b></p> <p>10 <b>were in the patent, is that right?</b></p> <p>11 MR. DIAMOND: Objection to form.</p> <p>12 If you know.</p> <p>13 A. I don't know specifically, but if</p> <p>14 those were the 34 claims in the patent, I</p> <p>15 understand that they were the subject of</p> <p>16 reexamination, so I assume that's true.</p> <p>17 <b>Q. Were you aware that Medtronic was</b></p> <p>18 <b>making a challenge and seeking a</b></p> <p>19 <b>re-examination of the entire patent?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. Now, do you see under part 2,</b></p> <p>22 <b>item 3 on the page we're talking about, the</b></p> <p>23 <b>patent office determined that claims 26 and</b></p> <p>24 <b>30 are patentable and are confirmed?</b></p> <p>25 A. I do see that.</p>

48 (Pages 186 to 189)

<p style="text-align: right;">Page 186</p> <p>1 A. Galloway</p> <p>2 <b>Q. So they agreed that two of the</b></p> <p>3 <b>claims were patentable and confirmed,</b></p> <p>4 <b>correct?</b></p> <p>5 A. Connect.</p> <p>6 <b>Q. And do you see under item 4 that</b></p> <p>7 <b>they determined that claims 1 through 25,</b></p> <p>8 <b>27 through 29 and 31 through 34 were</b></p> <p>9 <b>rejected, do you see that?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. So they struck those claims from</b></p> <p>12 <b>the patent, is that right?</b></p> <p>13 MR. DIAMOND: Objection to form.</p> <p>14 BY MR. KAMINSKY:</p> <p>15 <b>Q. Is that what you understand</b></p> <p>16 <b>happened?</b></p> <p>17 A. I understand that the claims</p> <p>18 listed under number 4, 1 to 25, 27 to 29</p> <p>19 and 31 through 34 were rejected.</p> <p>20 <b>Q. And therefore were not going to</b></p> <p>21 <b>be patentable, is that right?</b></p> <p>22 MR. DIAMOND: Objection to</p> <p>23 form.</p> <p>24 A. Well, according to this ruling,</p> <p>25 they were rejecting -- we would have I</p>	<p style="text-align: right;">Page 188</p> <p>1 A. Galloway</p> <p>2 the time of trial.</p> <p>3 MR. KAMINSKY: Okay. Thank you.</p> <p>4 (Time noted: 1:46 p.m.)</p> <p>5</p> <p>6</p> <p>7 _____</p> <p>8 AUBREY GALLOWAY</p> <p>9 Subscribed and sworn to before me</p> <p>10 this ____ day of _____, 2008.</p> <p>11</p> <p>12 _____</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 187</p> <p>1 A. Galloway</p> <p>2 think an opportunity to appeal that.</p> <p>3 <b>Q. Have you appealed that?</b></p> <p>4 A. I think that we would have to go</p> <p>5 back to the Patent Office in my</p> <p>6 understanding for potential re-examination.</p> <p>7 I'm not the attorney, so I don't know for</p> <p>8 sure.</p> <p>9 <b>Q. Has Quickie instructed anyone to</b></p> <p>10 <b>appeal this decision or do anything to</b></p> <p>11 <b>attempt to overturn this decision that is</b></p> <p>12 <b>reflected in Exhibit 63?</b></p> <p>13 MR. DIAMOND: You can answer</p> <p>14 other than in the instructions that</p> <p>15 you or Quickie would have given to its</p> <p>16 counsel.</p> <p>17 THE WITNESS: Sure.</p> <p>18 A. Again, up until this point, since</p> <p>19 we're under litigation, I think we haven't</p> <p>20 instructed a specific action on this part</p> <p>21 at this time.</p> <p>22 MR. KAMINSKY: No further</p> <p>23 questions.</p> <p>24 MR. DIAMOND: I will reserve all</p> <p>25 my questions for this witness until</p>	<p style="text-align: right;">Page 189</p> <p>1</p> <p>2 C E R T I F I C A T E</p> <p>3 STATE OF NEW YORK )</p> <p>4 : ss.</p> <p>5 COUNTY OF NEW YORK )</p> <p>6</p> <p>7 I, Joan Urzia, a Notary Public</p> <p>8 within and for the State of New York,</p> <p>9 do hereby certify:</p> <p>10 That AUBREY GALLOWAY, the witness</p> <p>11 whose deposition is hereinbefore set</p> <p>12 forth, was duly sworn by me and that</p> <p>13 such deposition is a true record of the</p> <p>14 testimony given by the witness.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this</p> <p>17 action by blood or marriage, and that I</p> <p>18 am in no way interested in the outcome</p> <p>19 of this matter.</p> <p>20 IN WITNESS WHEREOF, I have</p> <p>21 hereunto set my hand this 13th day of</p> <p>22 June, 2008.</p> <p>23</p> <p>24 _____</p> <p>25 Joan Urzia</p>

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**Dr. Aubrey Galloway**

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1 A. Galloway

2 the time of trial.

3 MR. KAMINSKY: Okay. Thank you.

4 (Time noted: 1:46 p.m.)

5

6



7


AUBREY GALLOWAY

8

9 Subscribed and sworn to before me

10 this 3rd day of July, 2008.

11



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13

14

ELLEN R. CHERRICK  
Notary Public, State of New York  
No. 31-02CH4951014  
Qualified in New York County  
Commission Expires June 5, 2011

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# EXHIBIT Q



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	U.S. Patent No.: 6,066,160
Colvin <i>et al.</i>	Owner: Quickie, L.L.C.
Appl. No. 09/198,087	Filed: November 23, 1998
For: <b>Passive Knotless Suture Terminator For Use in Minimally Invasive Surgery and to Facilitate Standard Tissue Securing</b>	Issued: May 23, 2000
	Art Unit: 3731

## PETITION FOR RECONSIDERATION UNDER 37 CFR 1.378(e)

Mail Stop PETITIONS  
 Commissioner for Patents  
 PO Box 1450  
 Alexandria, VA 22313-1450

Sir:

The above-referenced patent, U.S. Patent No. 6,066,160 ("the '160 patent"), expired for delayed payment of the first maintenance fee. Submitted herewith is Petitioner's Petition pursuant to 37 CFR 1.378(e) for Reconsideration of the Decision on Petition (the "Reconsideration Petition"). In connection therewith, Petitioner respectfully states as follows:

**I. SUPPLEMENTS TO AND FURTHER COMMENTS CONCERNING THE EXHIBITS**

Petitioner is providing a new Exhibit 15 setting forth Petitioner's most recent attempt to obtain documents from Thelen, Reid & Priest, LLP ("Thelen") and Greenberg Traurig, LLP ("Greenberg"), and their responses thereto.

On March 14, 2007, Petitioner wrote to Thelen again seeking production of the listed documentation for use in connection with the present Reconsideration Petition. Thelen apparently forwarded Petitioner's correspondence to outside counsel, who merely repeated Thelen's prior refusals to produce any documents to assist Petitioner in connection with this Reconsideration Petition. To date, Thelen has not produced a single document for Petitioner's use in support of either the original Reinstatement Application or the current Reconsideration Petition.

25/08/2007 19:01:17:01 012025309 6966160

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012025309

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Serial No.: 09/198,087, Patent No.: 6,066,160  
 Attorney Docket No.: Quickie-001-PT

Similarly, Exhibit 15 includes Petitioner's April 6, 2007 correspondence to Greenberg, likewise requesting production of the listed documentation for use in connection with the present Reconsideration Petition. Greenberg responded to this correspondence in an April 13, 2007 letter (also included), not to state that they have no responsive documents, but rather to reiterate that Greenberg was refusing to produce any such documents on the grounds that they are irrelevant because Greenberg had no responsibility for payment of maintenance fees on the '160 Patent. As with Thelen, to date Greenberg has not produced a single document to assist Petitioner in its efforts to reinstate the '160 Patent.

While Petitioner would undoubtedly prefer to attach more documentary evidence in support of its request for the '160 Patent's reinstatement, to date all efforts to obtain such documents and information from Petitioner's former counsel have been unsuccessful. Nevertheless, the available evidence demonstrates that the delay in paying maintenance fees was unavoidable as to Petitioner due to its outside counsel's failure to honor their statutory, regulatory, and contractual obligations. For that reason, as discussed below, Petitioner seeks entry of an order reversing the Decision on Petition and ordering reinstatement of the '160 Patent.

## **II. RESPONSE TO THE DECISION ON PETITION**

### **A. Preliminary issues needing clarification**

The Decision on Petition contains several factual and procedural inconsistencies that render the conclusions reached therein subject to further scrutiny. For example, although the Office correctly states that the decision to dismiss is made under 37 CFR 1.378(b), the Decision goes on to incorrectly state that "[t]he reconsideration request should include a cover letter entitled 'Renewed Petition under 37 CFR 1.137'" and that extensions of time are permitted under 37 CFR 1.136(a). Decision at p. 1. Yet, correctly, the Decision grants Petitioner two months to file a "Petition for Reconsideration under 37 CFR 1.378(b)" where such time to file is not extendable. Decision at pp. 4-5 (including fn 1).

Moreover, the Decision states that "[a] showing of unavoidable delay must include a showing that the failure to pay the maintenance fee was unavoidable from the time the payment was due, May 24, 2004, through the filing of a grantable petition."

Serial No.: 09/198,087, Patent No.: 6,066,160  
 Attorney Docket No.: Quickie-001-PT

Decision at p. 4 (emphasis added). May 24, 2004, however, is the date that the patent expired, not the date where payment was due. See Decision at p. 1. November 23, 2003 was the due date of the 3.5 year maintenance fee after which, between November 24, 2003 and May 23, 2004, the fee could have been paid with a surcharge. See Decision at p. 1. Finally, May 23, 2003 was the first day the United States Patent and Trademark Office ("USPTO") would accept payment of the fee. See Decision at p. 1. The Decision on Petitioner's errors in the citing the significance of these dates renders the entire decision subject to question.

In addition to containing erroneous date references, the Decision also contains serious substantive errors concerning the documents and evidence Petitioner has presented. Specifically, the Decision concludes that "Patentee has failed to account for the period of time between March 4, 2003, when attorney [Todd] Sharrin's responsibility for the patent terminated, and December 5, 2003, when Patentee filed a Change of Attorney Docket Number and Change of Address Notice. Patentee has thus failed to account for the entire delay." Decision at p. 4. As discussed below, this conclusion cannot be supported by a review of the available facts and evidence.

At the outset, Petitioner disagrees with the Office's conclusion that Sharinn's responsibility for the '160 Patent terminated on March 4, 2003, and Petitioner further notes that there is no objective evidence in the record that would support the Office's conclusion in that regard. Moreover, even assuming that March 4, 2003 was the date upon which Sharinn's responsibility ended -- an assumption that Petitioner vehemently contests -- the power of attorney filed by Thelen on that very same date shows that at least Thelen had responsibility for maintenance fees during the March 4, 2003 to December 5, 2003 period referenced in the Decision. As such, Petitioner has accounted for the entire delay by showing with the available evidence that at all relevant times Greenberg/Sharinn and Thelen each had responsibility for maintenance fees on the '160 Patent. Contrary to the conclusion reached in the Decision, Petitioner has thus accounted for the entire period March 4, 2003 and December 5, 2003.

#### **B. Response to Decision, pg. 4, ¶ 1**

The Decision states that "Patentee, however, may not rely upon a delay caused by the actions or inactions of Thelen to support an assertion that payment of a maintenance



Serial No.: 09/198,087, Patent No.: 6,066,160  
 Attorney Docket No.: Quickie-001-PT

fee was unavoidable.” Decision at p. 4. The assumption underlying this conclusion is only partly correct – Petitioner relies on the delays caused by the inactions of *both* Thelen *and* Greenberg. As discussed previously, Petitioner has shown with the available evidence that the delay was unavoidable because at all relevant times, Thelen held Petitioner’s general power of attorney and Greenberg/Sharinn were the designated recipients of all office communications concerning maintenance fees on the ‘160 Patent. In light of those facts, it is self-evident that Petitioner was reasonably looking to its outside counsel to handle maintenance fees on the ‘160 Patent, and thus the failure to pay those fees was unavoidable to Petitioner.

**E. Response to Decision, pg. 4, ¶ 2, generally**

Petitioner acknowledges that, in the best of circumstances, its former outside counsel would honor their obligation to produce Petitioner’s files such that the record on this reinstatement application could be more complete. Unfortunately, both Thelen and Greenberg have stonewalled every effort to obtain those client files and other documents related to their representation of Petitioner before the Office in connection with the ‘160 Patent. For that reason, responsibility for failure to present a complete record in support of Petitioner’s reinstatement application falls squarely at the feet of Thelen and Greenberg, not Petitioner’s.

Nevertheless, as discussed herein, the evidence that is available demonstrates that the delay in paying maintenance fees on the ‘160 Patent was unavoidable to Petitioner. If the Office disagrees with that conclusion, then at a minimum Petitioner should be allowed additional time to force Thelen and Greenberg to produce documents that are necessary to complete the record on Petitioner’s reinstatement application.

**III. CONCLUSION**

The delay in payment of maintenance fees on the ‘160 Patent was unavoidable to Petitioner because both Thelen and Greenberg failed to honor their contractual, statutory, and regulatory duties to monitor maintenance fees and notify Petitioner when those fees were due. The available evidence – as well as the evidence that is surely in Thelen’s and Greenberg’s hands that they are refusing to produce – demonstrates that the failure to timely pay maintenance fees on the ‘160 Patent was unavoidable to Petitioner.

Serial No.: 09/198,087, Patent No.: 6,066,160  
Attorney Docket No.: Quickie-001-PT

Simply stated, Petitioner reasonably looked to its outside counsel to monitor maintenance fees on the '160 Patent. Outside counsel placed itself firmly between the PTO and Petitioner, such that Petitioner was entirely reliant upon counsel to communicate with the PTO concerning all aspects of the '160 Patent. Petitioner thus had no opportunity to discover that outside counsel was not honoring its duties, and likewise had no opportunity to discover that the maintenance fees had not been paid. Therefore, the entire tale of unfortunate events leading to non-payment of those maintenance fees was unavoidable to Petitioner and the sole fault of Greenberg/Sharinn and Thelen.

For all of those reasons, Petitioner respectfully requests reconsideration and reversal of the Decision on Petition, and entry of an order allowing late acceptance of maintenance fees and reinstatement of the '160 Patent. In the alternative, Petitioner requests entry of an order holding this proceeding in abeyance pending Petitioner's efforts to compel Thelen and Greenberg to produce documents and information to further supplement the record in this matter.

Enclosed herewith is the \$400.00 fee required under 37 CFR 1.17(f). Payment is by credit card for \$400.00. Form PTO-2038 is attached. As to any overpayment or refund, please send a refund check.

Respectfully submitted,  
MAJER & MAIER, PLLC



Timothy J. Maier  
Reg. No. 51,986

Date: May 4, 2007

c/o Timothy J. Maier, Esq.  
Maier & Maier, PLLC  
1000 Duke Street  
Alexandria, VA 22314 USA  
(703) 740-8322 x101

# **EXHIBIT R**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----x  
QUICKIE, LLC,

Index No. 105235/07

Plaintiff,

-against-

COMPLAINT

GREENBERG TRAURIG, LLC

Defendant.

NEW YORK  
COUNTY CLERK'S OFFICE

APR 10 2008

NOT COMPARED  
WITH COPY FILE

-----x  
Plaintiff, Quickie, LLC, by and through its attorneys, Janvey, Gordon, Herlands, Randolph & Cox, LLP and Diamond, McCarthy, Taylor, Finley & Lee L.L.P., as and for its Complaint, alleges as follows:

SUMMARY OF CLAIMS

1. This is a legal malpractice action seeking to redress the harms caused by Greenberg Traurig, LLP ("Greenberg"). Quickie, LLC ("Quickie" or "Plaintiff") retained Greenberg and Todd S. Sharinn, Esq. ("Sharinn"), a New York licensed attorney employed by Greenberg and practicing law in Greenberg's New York City office, to provide legal expertise and advice concerning a valuable medical device patent held by Quickie.

2. Defendant's negligence and malpractice occurred when, despite making affirmative representations to the contrary, Defendant failed to notify Plaintiff shortly before maintenance fees were due on the patent, and failed to forward maintenance fee reminder notices Defendant received from the United States Patent and Trademark Office (the "PTO").

3. Defendant's negligence and negligent misrepresentations materially damaged Quickie -- a company formed by world-renowned cardiovascular surgeons and physicians -- all of whom reasonably, justifiably and foreseeably relied on Defendant's written representations and legal expertise to ensure that Quickie's patent rights were appropriately pursued and protected. Upon information and belief, as a result of Defendant's wrongdoing, Quickie has suffered more than \$10 million in actual and consequential damages, for which recovery is sought herein.

#### PARTIES, JURISDICTION AND VENUE

4. Plaintiff Quickie, LLC is a limited liability company organized and existing under the laws of the State of New York, and having its principal place of business at Rick, Steiner, Segal & Fell, 3 New York Plaza, New York, New York, 10004, Attention Alan L. Fell, Esq.

5. Defendant Greenberg Traurig, LLP is a New York registered limited liability partnership with its principal place of business in the State of New York located at 200 Park Avenue, New York, New York 10166. Greenberg is liable for the acts of Sharrin by virtue of the principles of *respondent superior*.

6. Quickie's claims arise under the laws of New York. Venue is proper under CPLR 503 because Plaintiff resides in New York County.

#### BACKGROUND

7. In the late 1990's, Quickie developed a device known as the "Passive Knotless Suture Terminator for Use in Minimally Invasive Surgery and to Facilitate Standard Tissue Securing" for use in open-heart surgeries (the "Quickie Device"). In 1998, Quickie retained Sharinn and his former law firm, Pepe & Hazard L.L.P. ("PH") to file an application with the PTO seeking a patent covering the Quickie Device. In November 1998, Quickie signed

a licensing and product development agreement with Medtronic, Inc. ("Medtronic"), and agreed to share confidential and proprietary information to assist Medtronic's evaluation of the Quickie Device. Medtronic ultimately declared that it was no longer interested in licensing Quickie Device, and that it was terminating the license agreement.

8. On May 23, 2000, the PTO issued U.S. Patent No. 6,066,160 covering the Quickie Device (the "160 Patent"). On May 30, 2000 and while he was still employed by PH, Sharinn wrote to Quickie to announce that the PTO had issued the '160 Patent, and that he "will notify [Quickie] regarding payment of the maintenance fees several months before they are due." When Sharinn left PH and joined Greenberg, the Quickie engagement likewise was transferred to Greenberg, and Greenberg assumed Sharinn's promise to notify Quickie before the maintenance fees were due.

9. Shortly thereafter, Medtronic began marketing a device that was virtually identical to the Quickie Device, thus infringing on the newly-granted '160 Patent. On February 11, 2002, Defendant filed Quickie's infringement claims against Medtronic in the United States District Court for the Southern District of New York, Civil Action No. 02 Civ. 1157 (the "Medtronic Litigation").

10. On October 22, 2002, Defendant completed an official PTO form entitled "Fee Address Indication Form," specifying that correspondence related to maintenance fees for the '160 Patent should also be sent to Sharinn at Greenberg's offices in New York City. Sharinn mailed the Fee Address Indication Form to the PTO on October 22, 2002, and faxed it to the PTO on December 16, 2002, using Greenberg stationary.

11. Defendant's experience in representing patent owners before the PTO is reported in its marketing materials. For example, Greenberg's website states that its patent capabilities:

run the gamut from application preparation and filing to examination and appeal processes to maximizing technology transfer opportunities – as well as handling patent litigation, when necessary. Through our experience working with a wide range of clients, we have developed a structured process for obtaining patent claims that provides strategic flexibility for our clients to best achieve their business goals.

Sharinn's biography similarly reports that he has "over fourteen years of legal experience in the worldwide acquisition, exploitation and aggressive enforcement of intellectual property rights," and that he is admitted to practice before the PTO. Given Defendant's and Sharinn's experience and reputation in assisting patent owners protect their inventions, at all relevant times Quickie reasonably relied on them to represent, protect, and maintain Quickie's ownership of the '160 Patent before the PTO.

12. Pursuant to 37 C.F.R. §1.362(e)(1), the window for payment of maintenance fees on the '160 Patent opened on May 23, 2003, and closed one year later on May 23, 2004. During the entire period May 23, 2003 to May 23, 2004, Defendant was on record at the PTO as the designated recipient of all communications related to maintenance fees on the '160 Patent. Moreover, Defendant expressly represented to Quickie that it would notify Quickie several months before the maintenance fees were due. Nevertheless, Defendant did not forward PTO reminder notices concerning maintenance fees on the '160 Patent, nor did it notify Quickie shortly before maintenance fees were due as promised. Pursuant to PTO regulations, the '160 Patent thus expired on May 24, 2004.

13. In July, 2006, Quickie learned that the '160 Patent had expired when a medical device company pulled out of ongoing negotiations to license the Quickie Device. Shortly thereafter, the PTO issued a determination that the '160 Patent was no longer valid, and the Medtronic Litigation was dismissed.

FIRST CAUSE OF ACTION  
(Negligence/Legal Malpractice)

14. Plaintiff repeats and realleges paragraphs 1 through 13 and incorporates them by reference.

15. At all relevant times, an attorney-client relationship existed between Defendant and Plaintiff with respect to the preservation of Plaintiff's ownership interests in the '160 Patent. In so representing Plaintiff, Sharinn was at all relevant times acting within the course and scope of his employment with Greenberg. Pursuant to the attorney-client relationship, Defendant owed Plaintiff a duty to exercise the reasonable skill and common knowledge expected of the legal profession, including, but not limited to, a duty to monitor and inform Quickie of deadlines to pay PTO maintenance fees on the '160 Patent.

16. In breach of its duties to Plaintiff, Defendant failed to exercise the reasonable skill and common knowledge expected of the legal profession. Specifically, upon information and belief, Defendant failed to establish an effective calendaring system to monitor the deadlines for maintenance payments on the '160 Patent, failed to notify Quickie that said maintenance fees could have been paid at any time between May 23, 2003 and May 23, 2004, and failed to forward PTO reminder notices for payment of maintenance fees on the '160 Patent.

17. Upon information and belief, Defendant's breaches of the duties owed to Plaintiff caused Plaintiff to suffer serious economic damages in excess of \$10 million that continue through the present, including, but not limited to: (1) loss of Plaintiff's ability to



recover infringement damages from Medtronic upon conclusion of the Medtronic Litigation; (2) wasted attorneys' fees and expenses incurred in pursuit of the Medtronic Litigation; (3) loss of royalties Quickie would have earned from licensing the '160 Patent; and (4) additional attorneys' fees and expenses incurred to remedy Defendant's malpractice and negligence.

18. Upon information and belief, but for Defendant's negligence and malpractice, the maintenance fees for the '160 Patent would have been paid when they were due. If the '160 Patent would be viable today, the Medtronic Litigation would have resulted in a judgment awarding Plaintiff damages as a result of Medtronic's infringement of the '160 Patent, and Plaintiff would have licensed the Quickie Device to other interested parties. All conditions precedent to Plaintiff's recovery on this cause of action have occurred or have been satisfied.

19. By reason of the foregoing, Defendant is liable to Plaintiff.

SECOND CAUSE OF ACTION  
(Negligent Misrepresentation)

20. Plaintiff repeats and realleges paragraphs 1 through 19 and incorporates them by reference.

21. At all relevant times, an attorney-client relationship existed between Defendant and Plaintiff with respect to preservation of Plaintiff's ownership of the '160 Patent. As part of that relationship, Sharinn negligently misrepresented to Plaintiff that he would provide notice several months before maintenance fees were due to be paid on the '160 Patent. In hiring Sharinn and notifying the PTO that all PTO correspondence concerning payment of maintenance fees on the '160 Patent was to be sent to Greenberg's offices, Greenberg adopted Sharinn's negligent misrepresentations to Quickie in that regard. Further, as part of the attorney-client relationship between Defendant and Plaintiff, Defendant represented that it was highly

competent in practicing before the PTO, it was well-versed in PTO regulations and procedures, and that it would prosecute and protect the '160 Patent.

22. Defendant intended that Quickie rely, or should have reasonably foreseen that Quickie would so rely, on the above-referenced negligent misrepresentations. Nevertheless, upon information and belief, Defendant did not establish reliable calendaring systems to ensure that the promised notice would be provided, nor did it have any reasonable basis for believing that such notice would be provided to Quickie.

23. Quickie reasonably and foreseeably relied on Defendant's negligent misrepresentations. Had Quickie known that Defendant did not establish reliable calendaring systems for monitoring the deadlines for payment of maintenance fees on the '160 Patent, Quickie would not have authorized Defendant to designate itself as the recipients of all PTO correspondence concerning such maintenance fees, nor would Quickie have relied upon Defendant's promise to provide notice several months before the maintenance fees were due.

24. Upon information and belief, as a proximate result of its reliance on Defendant's negligent misrepresentations, Plaintiff suffered serious economic damages in excess of \$10 million that continue to the present including, but not limited to: (1) loss of Plaintiff's ability to recover infringement damages from Medtronic upon conclusion of the Medtronic Litigation; (2) wasted attorneys' fees and expenses in pursuit of the Medtronic Litigation; (3) loss of royalties Quickie would have earned from licensing the '160 Patent; and (4) additional attorneys' fees and expenses incurred to remedy Defendant's negligence and malpractice. All conditions precedent to Plaintiff's recovery on this cause of action have occurred or have been satisfied.

25. By reason of the foregoing, Defendant is liable to Plaintiff.

PRAYER FOR RELIEF

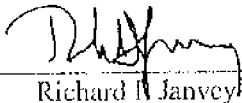
WHEREFORE, Plaintiff Quickie, LLC requests that this Court grant it judgment against Defendant and award it:

1. All applicable and appropriate actual, consequential, statutory, and exemplary damages and attorneys' fees, as permitted by law, with interest thereon; and
2. Such other and further relief to which Plaintiff is entitled.

Dated: New York, New York  
April 17, 2007

Respectfully submitted,

JANVEY, GORDON, HERLANDS, RANDOLPH  
& COX, LLP  
Attorneys for Plaintiff

By:   
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# **EXHIBIT S**

Page 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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QUICKIE, LLC,

Plaintiff,

vs. 07-CV-10331 (RMB) (DFE)

GREENBERG TRAURIG, LLC, et al.,

Defendants.  
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DEPOSITION OF ALAN FELL

Friday, June 20, 2008

9:30 a.m.

Reported by: Joan Urzia, RPR

JOB NO. 203749

2 (Pages 2 to 5)

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4 June 20, 2008</p> <p>5 9:30 a.m.</p> <p>6 New York, New York</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Deposition of Alan Fell, held</p> <p>11 at the Offices of Pollack &amp; Kaminsky,</p> <p>12 114 West 47th Street, New York, New York,</p> <p>13 Pursuant to Notice, before Joan Urzia, a</p> <p>14 Notary Public of the State of New York.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED, by</p> <p>3 and between the attorneys for the respective</p> <p>4 parties herein, that filing and sealing of</p> <p>5 the transcript be waived, and the same are</p> <p>6 hereby waived.</p> <p>7</p> <p>8 IT IS FURTHER STIPULATED AND AGREED</p> <p>9 that all objections, except as to the form</p> <p>10 of the question, shall be reserved to the</p> <p>11 time of the trial.</p> <p>12</p> <p>13 IT IS FURTHER STIPULATED AND AGREED</p> <p>14 that the within deposition may be sworn to</p> <p>15 and signed before any officer authorized to</p> <p>16 administer an oath, with the same force and</p> <p>17 effect as if signed and sworn to before the</p> <p>18 Court.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 APPEARANCES:</p> <p>3</p> <p>4</p> <p>5 DIAMOND MCCARTHY, LLP</p> <p>6 Attorneys for Plaintiff</p> <p>7 620 Eighth Avenue, 39th Floor</p> <p>8 New York, New York 10018</p> <p>9 BY: STEPHEN T. LODEN, ESQ.</p> <p>10</p> <p>11</p> <p>12 POLLACK &amp; KAMINSKY</p> <p>13 Attorneys for Defendant</p> <p>14 114 West 47th Street</p> <p>15 New York, New York 10036</p> <p>16 BY: MARTIN I. KAMINSKY, ESQ.</p> <p>17 JUSTIN Y.K. CHU, ESQ.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 Fell</p> <p>2 ALAN FELL,</p> <p>3 called as a witness, having been</p> <p>4 duly sworn by a Notary Public, was</p> <p>5 examined and testified as follows:</p> <p>6</p> <p>7 EXAMINATION BY</p> <p>8 MR. KAMINSKY:</p> <p>9 Q Would you state your full name</p> <p>10 for the record, please.</p> <p>11 A Alan Leslie Fell.</p> <p>12 Q Do you have a business address,</p> <p>13 Mr. Fell?</p> <p>14 A Yes, 90 Broad Street, New York,</p> <p>15 New York 10004.</p> <p>16 Q You're an attorney, is that</p> <p>17 correct?</p> <p>18 A Yes.</p> <p>19 Q What is the name of your law</p> <p>20 firm?</p> <p>21 A Rick Steiner Fell &amp; Benowitz.</p> <p>22 Q How long have you been with that</p> <p>23 law firm?</p> <p>24 A Eleven years.</p> <p>25 Q Do you have a residence address?</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 6</p> <p>1 <b>Fell</b></p> <p>2 A Yes.</p> <p>3 <b>Q Can you please give us that?</b></p> <p>4 A 333 East 68th Street, New York,</p> <p>5 New York 10065.</p> <p>6 <b>Q We'll seal this next question,</b></p> <p>7 <b>but what is your social security number?</b></p> <p>8 A I'm not going to give you my</p> <p>9 social security number. I don't think</p> <p>10 that's relevant.</p> <p>11 <b>Q It is relevant to enable us to</b></p> <p>12 <b>investigate the situation. So if you won't</b></p> <p>13 <b>give it to us, we'll seek a ruling that we</b></p> <p>14 <b>should get it.</b></p> <p>15 A Okay.</p> <p>16 <b>Q I don't think it's confidential.</b></p> <p>17 <b>Have you ever been subject to a</b></p> <p>18 <b>disciplinary proceeding?</b></p> <p>19 A Yes.</p> <p>20 <b>Q Have you ever had a complaint</b></p> <p>21 <b>against you as an attorney?</b></p> <p>22 A Yes.</p> <p>23 <b>Q By whom?</b></p> <p>24 A I frankly don't remember the</p> <p>25 names, about 27, 28 years ago, there were</p>	<p style="text-align: right;">Page 8</p> <p>1 <b>Fell</b></p> <p>2 I have been sued by tenants in connection</p> <p>3 with such litigation.</p> <p>4 <b>Q Have you ever had a judgment</b></p> <p>5 <b>against you?</b></p> <p>6 A I don't think so.</p> <p>7 <b>Q Have you ever had a decision by</b></p> <p>8 <b>a court adverse to your position in any of</b></p> <p>9 <b>those lawsuits?</b></p> <p>10 A I might have. I just don't</p> <p>11 know. They were usually handled by the</p> <p>12 insurance company.</p> <p>13 <b>Q Have you given depositions in</b></p> <p>14 <b>those cases?</b></p> <p>15 A Occasionally, sure.</p> <p>16 <b>Q Do you have copies of the</b></p> <p>17 <b>transcripts?</b></p> <p>18 A Probably not.</p> <p>19 <b>Q When was the last time you gave</b></p> <p>20 <b>a deposition in a case?</b></p> <p>21 A Aside from this litigation</p> <p>22 because I testified, you know, in the</p> <p>23 earlier --</p> <p>24 <b>Q In Medtronic, yes, yes.</b></p> <p>25 A So that was in 2003 or 2004, I</p>
<p style="text-align: right;">Page 7</p> <p>1 <b>Fell</b></p> <p>2 two separate complaints, one was about 28</p> <p>3 years ago and one was maybe 25 years ago.</p> <p>4 <b>Q What were the complaints?</b></p> <p>5 A One was -- I don't remember it</p> <p>6 that well -- it was a litigation in</p> <p>7 connection with real estate and one of the</p> <p>8 parties was an attorney and he filed, he</p> <p>9 filed a complaint.</p> <p>10 <b>Q And what was the disposition of</b></p> <p>11 <b>that?</b></p> <p>12 A It was dismissed.</p> <p>13 <b>Q By whom?</b></p> <p>14 A First Disciplinary Committee,</p> <p>15 First Department, I believe.</p> <p>16 <b>Q Was there any hearing?</b></p> <p>17 A No, it was just on papers.</p> <p>18 <b>Q Is that both complaints?</b></p> <p>19 A Yes.</p> <p>20 <b>Q Have you ever been in a lawsuit?</b></p> <p>21 A Yes.</p> <p>22 <b>Q How many lawsuits have you been</b></p> <p>23 <b>in?</b></p> <p>24 A Quite a few. I manage real</p> <p>25 estate and partners in real estate LLCs and</p>	<p style="text-align: right;">Page 9</p> <p>1 <b>Fell</b></p> <p>2 don't remember.</p> <p>3 <b>Q July 29, 2003.</b></p> <p>4 A 2003, okay. So it was probably</p> <p>5 around the same time. It was a negligence</p> <p>6 suit with a group. I had bought a property</p> <p>7 and it was a baseball tenant that had, you</p> <p>8 know, that had baseball for kids and there</p> <p>9 was an accident which actually occurred</p> <p>10 prior to our buying the property and they</p> <p>11 brought us into the suit. I testified.</p> <p>12 <b>Q Have you ever testified at a</b></p> <p>13 <b>trial?</b></p> <p>14 A I don't think so.</p> <p>15 <b>Q Did any of the cases that you</b></p> <p>16 <b>were a party in go to trial?</b></p> <p>17 A No.</p> <p>18 <b>Q Did any of the cases that you</b></p> <p>19 <b>were a party in result in a summary</b></p> <p>20 <b>judgment motion against your side of the</b></p> <p>21 <b>case?</b></p> <p>22 A Not to my recollection.</p> <p>23 <b>Q Have you ever personally brought</b></p> <p>24 <b>a lawsuit as a plaintiff?</b></p> <p>25 A I have not personally, but as a</p>

4 (Pages 10 to 13)

<p style="text-align: right;">Page 10</p> <p>1 Fell</p> <p>2 member of an LLC I've occasionally brought</p> <p>3 lawsuits.</p> <p>4 <b>Q How many LLCs are you a member</b></p> <p>5 <b>of?</b></p> <p>6 A Eight or nine probably.</p> <p>7 <b>Q What businesses are they in?</b></p> <p>8 A Most of them are real estate</p> <p>9 businesses.</p> <p>10 <b>Q How many are not?</b></p> <p>11 A One.</p> <p>12 <b>Q Is that Quickie?</b></p> <p>13 A Uh-huh.</p> <p>14 <b>Q Do you still have a 4 percent</b></p> <p>15 <b>interest in Quickie?</b></p> <p>16 A Yes, I do.</p> <p>17 <b>Q How long have you had that</b></p> <p>18 <b>interest?</b></p> <p>19 A I don't know exactly when. It</p> <p>20 was 2001 -- I don't remember exactly.</p> <p>21 <b>Q Did you make any capital</b></p> <p>22 <b>contribution to Quickie to get that</b></p> <p>23 <b>interest?</b></p> <p>24 A No.</p> <p>25 <b>Q How did you come to get that</b></p>	<p style="text-align: right;">Page 12</p> <p>1 Fell</p> <p>2 <b>the interest itself?</b></p> <p>3 A I don't think that's a taxable</p> <p>4 event, getting the interest.</p> <p>5 <b>Q Why not?</b></p> <p>6 A I don't know what the value of</p> <p>7 the interest would be.</p> <p>8 <b>Q Well, if it was given to you in</b></p> <p>9 <b>return for legal services, it would be the</b></p> <p>10 <b>value of the legal services, wouldn't it?</b></p> <p>11 A But I'm not sure it was given to</p> <p>12 me.</p> <p>13 <b>Q So what was it given to you for?</b></p> <p>14 A Like I said, I don't know what</p> <p>15 Dr. Colvin had in mind at the time, but he</p> <p>16 reduced some of these interests and he gave</p> <p>17 me 4 percent.</p> <p>18 <b>Q Does Quickie file income tax</b></p> <p>19 <b>returns?</b></p> <p>20 A Yes.</p> <p>21 <b>Q Have you ever seen them?</b></p> <p>22 A Yes.</p> <p>23 <b>Q You're the general counsel, is</b></p> <p>24 <b>that right?</b></p> <p>25 A That is correct.</p>
<p style="text-align: right;">Page 11</p> <p>1 Fell</p> <p>2 <b>interest?</b></p> <p>3 A Dr. Stephen Colvin assigned it</p> <p>4 to me.</p> <p>5 <b>Q What was the consideration that</b></p> <p>6 <b>you gave for the assignment?</b></p> <p>7 A No monetary consideration. I</p> <p>8 was doing legal work for the LLC.</p> <p>9 <b>Q So that was in return for legal</b></p> <p>10 <b>services?</b></p> <p>11 A We never discussed it. He just,</p> <p>12 he had the authority amongst the original</p> <p>13 members of the LLC to adjust the</p> <p>14 percentages and at some point after the</p> <p>15 original members were involved he assigned</p> <p>16 that to me.</p> <p>17 <b>Q Did you place a value on that</b></p> <p>18 <b>interest when you got it?</b></p> <p>19 A The accountant might have. I</p> <p>20 don't remember.</p> <p>21 <b>Q Did you report it on your income</b></p> <p>22 <b>tax return?</b></p> <p>23 A I reported any distributions I</p> <p>24 received from Quickie.</p> <p>25 <b>Q Did you report the getting of</b></p>	<p style="text-align: right;">Page 13</p> <p>1 Fell</p> <p>2 <b>Q Did Quickie report the giving of</b></p> <p>3 <b>an interest to you on any of its tax</b></p> <p>4 <b>returns?</b></p> <p>5 A If there was a distribution, I</p> <p>6 would have received a K-1.</p> <p>7 <b>Q Did they report the giving to</b></p> <p>8 <b>you of the 4 percent interest on their tax</b></p> <p>9 <b>returns?</b></p> <p>10 A Not to my knowledge. I don't</p> <p>11 know for sure.</p> <p>12 <b>Q Do you know if Quickie -- strike</b></p> <p>13 <b>that.</b></p> <p>14 <b>Did Quickie file a gift tax</b></p> <p>15 <b>return with respect to giving of an</b></p> <p>16 <b>interest to you?</b></p> <p>17 A No, I don't think it would be</p> <p>18 obligated to file a gift tax return.</p> <p>19 <b>Q It wasn't a gift, was it?</b></p> <p>20 A I don't think Quickie would be</p> <p>21 obligated to file a gift tax return.</p> <p>22 <b>Q Did Dr. Colvin give you this</b></p> <p>23 <b>interest from his own interest?</b></p> <p>24 A I don't recall how he adjusted</p> <p>25 it.</p>



5 (Pages 14 to 17)

<p style="text-align: right;">Page 14</p> <p>1 Fell</p> <p>2 <b>Q Were you Dr. Colvin's personal</b></p> <p>3 <b>attorney before he died?</b></p> <p>4 A Yes, I was.</p> <p>5 <b>Q Are you representing his estate?</b></p> <p>6 A Yes, I am.</p> <p>7 <b>Q Are you aware of any gift tax</b></p> <p>8 <b>return by Dr. Colvin that relates to the</b></p> <p>9 <b>4 percent interest that was given to you in</b></p> <p>10 <b>Quickie?</b></p> <p>11 A No.</p> <p>12 <b>Q Is his estate filing any tax</b></p> <p>13 <b>return indicating that gift?</b></p> <p>14 A No.</p> <p>15 <b>Q Does his estate remain a member</b></p> <p>16 <b>of Quickie LLC?</b></p> <p>17 A His estate was never a member of</p> <p>18 the LLC.</p> <p>19 <b>Q Was he personally?</b></p> <p>20 A No.</p> <p>21 <b>Q Who were the members of Quickie</b></p> <p>22 <b>LLC?</b></p> <p>23 A I don't have the list in front</p> <p>24 of me, but -- do you want me to do it from</p> <p>25 memory?</p>	<p style="text-align: right;">Page 16</p> <p>1 Fell</p> <p>2 <b>Have all of the persons who are</b></p> <p>3 <b>members of Quickie that you mentioned</b></p> <p>4 <b>signed agreements with Quickie?</b></p> <p>5 A Yes.</p> <p>6 <b>Q Is there an LLC operating</b></p> <p>7 <b>agreement?</b></p> <p>8 A Yes.</p> <p>9 <b>Q Who is the managing member?</b></p> <p>10 A Dr. Galloway.</p> <p>11 <b>Q How did Stephen Colvin come to</b></p> <p>12 <b>give you a 4 percent interest if his wife</b></p> <p>13 <b>is the one who holds the interest?</b></p> <p>14 MR. LODEN: Objection. Form.</p> <p>15 A If I recall correctly, the</p> <p>16 members of Quickie, the original members,</p> <p>17 had authorized Stephen Colvin to adjust the</p> <p>18 percentage interests and they all agreed</p> <p>19 to, they all signed that.</p> <p>20 <b>Q There is a signed document to</b></p> <p>21 <b>that effect?</b></p> <p>22 A Yes.</p> <p>23 MR. KAMINSKY: We ask that it be</p> <p>24 produced.</p> <p>25 BY MR. KAMINSKY:</p>
<p style="text-align: right;">Page 15</p> <p>1 Fell</p> <p>2 <b>Q As best you can, understanding</b></p> <p>3 <b>that you're not sure you're exactly right.</b></p> <p>4 A Aubrey Galloway.</p> <p>5 <b>Q I'm sorry, if you can explain if</b></p> <p>6 <b>it's a personal interest, in other words if</b></p> <p>7 <b>it's held in a --</b></p> <p>8 A The membership interest, the</p> <p>9 members of Quickie LLC are all individuals.</p> <p>10 <b>Q Okay. Then please do identify</b></p> <p>11 <b>them as best you remember them.</b></p> <p>12 A Aubrey Galloway, Elaine</p> <p>13 Brackfeld Colvin, Alan Katz, Eugene Grassi,</p> <p>14 Paul Otto, Ibb -- I'm not sure on the</p> <p>15 spelling, it's Lagfelden, I think,</p> <p>16 something like that, and myself.</p> <p>17 <b>Q Now from whom did Dr. Colvin</b></p> <p>18 <b>give you a 4 percent interest?</b></p> <p>19 A I don't recall.</p> <p>20 <b>Q Do the records of Quickie</b></p> <p>21 <b>indicate that?</b></p> <p>22 A They probably would, yes.</p> <p>23 <b>Q Have all of the persons involved</b></p> <p>24 <b>in Quickie that you mentioned -- strike</b></p> <p>25 <b>that.</b></p>	<p style="text-align: right;">Page 17</p> <p>1 Fell</p> <p>2 <b>Q Are there signed documents</b></p> <p>3 <b>that memorialize the giving to you of a</b></p> <p>4 <b>4 percent interest?</b></p> <p>5 A Might be. I don't recall.</p> <p>6 MR. KAMINSKY: We'd ask to see</p> <p>7 those as well.</p> <p>8 MR. LODEN: Just for the record,</p> <p>9 they should be in the production. I</p> <p>10 trust that you looked for them, and if</p> <p>11 you haven't found them -- I know the</p> <p>12 documents do exist. I've seen them</p> <p>13 myself.</p> <p>14 A My recollection, by the way, is</p> <p>15 I have a looseleaf that has all the Quickie</p> <p>16 documents that were, that was completely</p> <p>17 duplicated early in the litigation. So it</p> <p>18 probably was produced.</p> <p>19 MR. LODEN: And you've produced</p> <p>20 documents, I believe.</p> <p>21 THE WITNESS: Yes, yes.</p> <p>22 MR. KAMINSKY: Okay. We'll take</p> <p>23 a look again, but if not we'll ask you</p> <p>24 to give us another copy or to point us</p> <p>25 to it by Bates number or whatever.</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 18</p> <p>1                   Fell</p> <p>2     Thank you.</p> <p>3 BY MR. KAMINSKY:</p> <p>4     <b>Q Did Dr. Colvin personally ever</b></p> <p>5 <b>have an interest in Quickie?</b></p> <p>6     A   No.</p> <p>7     <b>Q Why not?</b></p> <p>8     A   It's privileged.</p> <p>9     <b>Q You're his attorney and so --</b></p> <p>10    A   I was at the time, and yes,</p> <p>11    yeah.</p> <p>12    <b>Q Would you summarize your</b></p> <p>13 <b>educational background for us starting with</b></p> <p>14 <b>college.</b></p> <p>15    A   I went to Franklin &amp; Marshall</p> <p>16 College. I have a BA in economics. I have</p> <p>17 a JD from Temple Law School.</p> <p>18    <b>Q Would you summarize your</b></p> <p>19 <b>occupational history for us.</b></p> <p>20    A   I worked for two years for two</p> <p>21 different small firms after I got out of</p> <p>22 law school. I'm trying to think of the</p> <p>23 name. You want me to give you the name?</p> <p>24    <b>Q Yes, please.</b></p> <p>25    A   Madeline &amp; Schacter I think was</p>	<p style="text-align: right;">Page 20</p> <p>1                   Fell</p> <p>2 started doing some legal work for</p> <p>3 Dr. Colvin in the mid '90s, maybe '94, '95,</p> <p>4 and then starting in about 10 years ago or</p> <p>5 so I started to do most of his personal</p> <p>6 work.</p> <p>7     <b>Q Are you Dr. Galloway's personal</b></p> <p>8 <b>counsel?</b></p> <p>9     A   I do work for Dr. Galloway. I</p> <p>10 think he has other attorneys too, but I</p> <p>11 still do work for Dr. Galloway as well.</p> <p>12    <b>Q Do you do personal work for any</b></p> <p>13 <b>of the other members of Quickie?</b></p> <p>14    A   I do some personal work for</p> <p>15 Mrs. Colvin and for Dr. Grassi.</p> <p>16    <b>Q How long have you done work for</b></p> <p>17 <b>Dr. Grassi?</b></p> <p>18    A   Oh, just a few years, 3 or 4</p> <p>19 years.</p> <p>20    <b>Q When was Quickie formed?</b></p> <p>21    A   I believe it was 1998.</p> <p>22    <b>Q Was it formed for any specific</b></p> <p>23 <b>purpose?</b></p> <p>24    A   Yes. It was forme because the</p> <p>25 doctors at NYU contemplated entering into</p>
<p style="text-align: right;">Page 19</p> <p>1                   Fell</p> <p>2 the name of the first one. The second one</p> <p>3 was Landis Tucker &amp; Gelman.</p> <p>4     Then I worked for a firm, then</p> <p>5 mid-size Wall Street firm called</p> <p>6 Guggenheimer &amp; Undermeyer.</p> <p>7     Then in about '80 or '81, I went</p> <p>8 on my own. In '82 or '83, I joined a</p> <p>9 gentleman named Solomon Friedman, the firm</p> <p>10 was then Poulier &amp; Friedman, I became a</p> <p>11 partner in that firm, Pulier Friedman &amp;</p> <p>12 Fell.</p> <p>13     Then in '94 or '95, we split up</p> <p>14 and I was on my own for a couple of years</p> <p>15 again.</p> <p>16     Then I think it was in 1997, I</p> <p>17 joined with then Rick Steiner.</p> <p>18    <b>Q When did you first begin to do</b></p> <p>19 <b>legal work for Dr. Colvin?</b></p> <p>20    A   I met Dr. Colvin through</p> <p>21 Dr. Galloway. Originally, I hadn't been</p> <p>22 doing work for him, but I knew of him</p> <p>23 through Dr. Galloway.</p> <p>24     I met Dr. Galloway in probably</p> <p>25 '80 or so, '80 or '81, and then I probably</p>	<p style="text-align: right;">Page 21</p> <p>1                   Fell</p> <p>2 an agreement with Medtronics for the</p> <p>3 development of some intellectual property.</p> <p>4    <b>Q What was that intellectual</b></p> <p>5 <b>property?</b></p> <p>6    A   It was basically a knotless</p> <p>7 suture, suturing technique.</p> <p>8    <b>Q Had Dr. Colvin and Dr. Galloway</b></p> <p>9 <b>formed any other company prior to Quickie</b></p> <p>10 <b>either together or with anyone else?</b></p> <p>11    A   I don't know. I mean, I think I</p> <p>12 had set up a PC for Dr. Galloway many years</p> <p>13 ago, but -- and Dr. Colvin may have set up</p> <p>14 other entities before I was representing</p> <p>15 him.</p> <p>16    <b>Q Had any of the doctors who</b></p> <p>17 <b>formed Quickie worked with you in creating</b></p> <p>18 <b>any other entity to deal with any</b></p> <p>19 <b>intellectual property prior to the</b></p> <p>20 <b>formation of Quickie?</b></p> <p>21    A   No, not prior.</p> <p>22    <b>Q Had you personally represented</b></p> <p>23 <b>any clients whose business involved</b></p> <p>24 <b>intellectual property prior to Quickie?</b></p> <p>25    A   Not really, no.</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 22</p> <p>1                   Fell</p> <p>2     <b>Q   When is the first time you dealt</b></p> <p>3 <b>with an entity that had patents -- strike</b></p> <p>4 <b>that.</b></p> <p>5                   <b>When is the first time you</b></p> <p>6 <b>represented an entity that had patents?</b></p> <p>7     A   It was at about that time when</p> <p>8 we started negotiating with Medtronics.</p> <p>9     <b>Q   Had you ever negotiated a patent</b></p> <p>10 <b>license before that?</b></p> <p>11    A   No.</p> <p>12     <b>Q   Did you negotiate the patent</b></p> <p>13 <b>license with Medtronic?</b></p> <p>14    A   I participated in the</p> <p>15 negotiation, but Todd Sharinn was the</p> <p>16 expert I was relying upon.</p> <p>17     <b>Q   Who retained Todd Sharinn?</b></p> <p>18    A   I guess Quickie did.</p> <p>19     <b>Q   Who made the determination that</b></p> <p>20 <b>Quickie would retain Todd Sharinn?</b></p> <p>21    A   Dr. Colvin probably.</p> <p>22     <b>Q   Did you have any role in the</b></p> <p>23 <b>retention of Todd Sharinn?</b></p> <p>24    A   Yeah, I think I recommended him.</p> <p>25     <b>Q   Did you interview Mr. Sharinn</b></p>	<p style="text-align: right;">Page 24</p> <p>1                   Fell</p> <p>2 father through Todd or Todd through his</p> <p>3 father, but I did a little work for the</p> <p>4 father. The father is an attorney and he</p> <p>5 had a fairly well-known collection firm,</p> <p>6 did a lot of collection work.</p> <p>7                   It may be that the person that</p> <p>8 introduced me was someone that did a lot of</p> <p>9 bankruptcy work and he may have known</p> <p>10 Todd's father and then that may have been</p> <p>11 the introduction.</p> <p>12     <b>Q   How old are you, sir?</b></p> <p>13    A   I am 59.</p> <p>14     <b>Q   Now you say that you had a role</b></p> <p>15 <b>in negotiating the Medtronic agreement.</b></p> <p>16 <b>What was your role?</b></p> <p>17    A   Well, I would discuss the issues</p> <p>18 with Todd and, you know, listen to his</p> <p>19 expertise, but I -- my recollection is that</p> <p>20 I was really relying on his expertise.</p> <p>21     <b>Q   But what was your role?</b></p> <p>22    A   I was kind of at that point</p> <p>23 just -- you know, I tried to look at the</p> <p>24 business side of the agreement.</p> <p>25     <b>Q   Who drafted the agreement?</b></p>
<p style="text-align: right;">Page 23</p> <p>1                   Fell</p> <p>2 <b>before he was selected as counsel for</b></p> <p>3 <b>Quickie?</b></p> <p>4    A   I believe so. I don't recall</p> <p>5 specifically, but I believe I did.</p> <p>6     <b>Q   On what basis did you recommend</b></p> <p>7 <b>Mr. Sharinn?</b></p> <p>8    A   My recollection, and it's not</p> <p>9 specific, is that somebody that, an</p> <p>10 attorney that I knew, knew of Todd -- I</p> <p>11 don't remember whether, I don't remember</p> <p>12 the name of the attorney -- and that he</p> <p>13 was, you know, a young attorney who had a</p> <p>14 background in, I forgot what it was,</p> <p>15 biology or something before he went to law</p> <p>16 school and that he was very knowledgeable in</p> <p>17 intellectual property and that's what he</p> <p>18 had been doing since he was admitted. Then</p> <p>19 I think I did meet him at, I think I was in</p> <p>20 the Chanon building at the time, 122 East</p> <p>21 42nd Street.</p> <p>22     <b>Q   Did you know Mr. Sharinn's</b></p> <p>23 <b>family or any members of his family?</b></p> <p>24    A   I knew his father. I don't</p> <p>25 remember whether I was introduced to his</p>	<p style="text-align: right;">Page 25</p> <p>1                   Fell</p> <p>2    A   An attorney from Medtronic. I</p> <p>3 think his name was Tom, I think it's Tom</p> <p>4 Iringer, I think.</p> <p>5     <b>Q   Do you recall that the agreement</b></p> <p>6 <b>provides that all notices that were going</b></p> <p>7 <b>to go to Quickie were going to go to you?</b></p> <p>8    A   Yes.</p> <p>9     <b>Q   Why was that?</b></p> <p>10   A   Because I was the general</p> <p>11 counsel.</p> <p>12     <b>Q   Do you recall that the agreement</b></p> <p>13 <b>did not provide for notices to go to</b></p> <p>14 <b>Mr. Sharinn?</b></p> <p>15   A   I don't recall that, but I'm not</p> <p>16 surprised.</p> <p>17     <b>Q   At a certain point Medtronic</b></p> <p>18 <b>terminated that agreement, is that correct?</b></p> <p>19   A   That's correct.</p> <p>20     <b>Q   Why did they terminate the</b></p> <p>21 <b>agreement?</b></p> <p>22   A   My recollection is that they</p> <p>23 weren't happy, weren't -- I don't know if</p> <p>24 happy is the correct word -- they weren't</p> <p>25 satisfied with the progress of the</p>

8 (Pages 26 to 29)

<p style="text-align: right;">Page 26</p> <p>1                   Fell</p> <p>2 development of the device. I did receive a</p> <p>3 letter. I don't remember the specifics of</p> <p>4 the letter.</p> <p>5     <b>Q Do you recall that they stated</b></p> <p>6 <b>that it was something that they did not</b></p> <p>7 <b>think could be commercialized?</b></p> <p>8     A I don't recall that, but if it's</p> <p>9 in the letter, it's in the letter.</p> <p>10    <b>Q You did give testimony in the</b></p> <p>11 <b>Quickie action against Medtronic, correct?</b></p> <p>12    A Yes.</p> <p>13    <b>Q You do recall that you gave a</b></p> <p>14 <b>deposition in that case, correct?</b></p> <p>15    A Yes.</p> <p>16    <b>Q Your deposition was taken on</b></p> <p>17 <b>July 29, 2003, do you recall that?</b></p> <p>18    A Generally, yes.</p> <p>19    <b>Q And it was taken at the offices</b></p> <p>20 <b>of the McDermott Will &amp; Emery firm?</b></p> <p>21    A Uh-huh.</p> <p>22    <b>Q At page 79 of your transcript</b></p> <p>23 <b>did you give this testimony:</b></p> <p>24        <b>"QUESTION: Did you have any</b></p> <p>25 <b>understanding as to why they wanted to</b></p>	<p style="text-align: right;">Page 28</p> <p>1                   Fell</p> <p>2 <b>testimony?</b></p> <p>3     A No, but if it's there, I'm sure</p> <p>4 I did.</p> <p>5     <b>Q And you'll stand by that</b></p> <p>6 <b>testimony?</b></p> <p>7     A I'm not going to say I'm a liar.</p> <p>8     <b>Q Well, I'm asking you if you want</b></p> <p>9 <b>to change it.</b></p> <p>10    A I probably had the letter in</p> <p>11 front of me at the time. You're asking me</p> <p>12 to testify without the letter in front of</p> <p>13 me. So, you know, it's the best of my</p> <p>14 recollection.</p> <p>15    <b>Q So as you sit here today, you're</b></p> <p>16 <b>not going to change that testimony?</b></p> <p>17        MR. LODEN: Objection. Form.</p> <p>18 BY MR. KAMINSKY:</p> <p>19    <b>Q Correct?</b></p> <p>20    A Correct.</p> <p>21    <b>Q Did anyone else sign a license</b></p> <p>22 <b>agreement with Quickie for the technology</b></p> <p>23 <b>that's covered by the patent that was</b></p> <p>24 <b>involved in the Medtronic license?</b></p> <p>25    A No.</p>
<p style="text-align: right;">Page 27</p> <p>1                   Fell</p> <p>2 <b>do that?"</b></p> <p>3        MR. KAMINSKY: We should go back</p> <p>4 a bit, referring to the letter that I</p> <p>5 think you mentioned before.</p> <p>6        "QUESTION: Do you understand</p> <p>7 what that refers to?</p> <p>8        "ANSWER: Yes, that they were</p> <p>9 going to terminate the agreement,</p> <p>10 which is what they did.</p> <p>11        "QUESTION: Okay. Did you have</p> <p>12 any understanding as to why they</p> <p>13 wanted to do that?</p> <p>14        "ANSWER: Not -- not</p> <p>15 specifically, no.</p> <p>16        "QUESTION: They never told you?</p> <p>17        "ANSWER: Well they -- no, I</p> <p>18 mean that's something I don't</p> <p>19 understand. I don't understand the</p> <p>20 technology. They just didn't think</p> <p>21 apparently that the way they stated</p> <p>22 it, that it was something that could</p> <p>23 be commercialized."</p> <p>24 BY MR. KAMINSKY:</p> <p>25    <b>Q Do you remember giving that</b></p>	<p style="text-align: right;">Page 29</p> <p>1                   Fell</p> <p>2    <b>Q Did anyone else offer to sign</b></p> <p>3 <b>such a license?</b></p> <p>4    A No.</p> <p>5    <b>Q You did approach at least two</b></p> <p>6 <b>other companies, is that right?</b></p> <p>7    A That's correct.</p> <p>8    <b>Q Which two entities did you</b></p> <p>9 <b>approach?</b></p> <p>10    A Ethicon and U.S. Surgical.</p> <p>11    <b>Q Is it correct that neither of</b></p> <p>12 <b>those entities was interested in doing a</b></p> <p>13 <b>license?</b></p> <p>14    A Correct. But may I say</p> <p>15 something? My recollection is one of the</p> <p>16 concerns they had is the ancillary rights</p> <p>17 that Medtronics may have had under the</p> <p>18 agreement.</p> <p>19    <b>Q Well, after Medtronic terminated</b></p> <p>20 <b>the license agreement it had, Quickie never</b></p> <p>21 <b>made an effort to go back to U.S. Surgical</b></p> <p>22 <b>or Ethicon to see if they would then be</b></p> <p>23 <b>interested in licensing the patent, is that</b></p> <p>24 <b>correct?</b></p> <p>25    A That's correct.</p>

9 (Pages 30 to 33)

<p style="text-align: right;">Page 30</p> <p>1 Fell</p> <p>2 <b>Q In fact, Quickie never went to</b></p> <p>3 <b>anyone else to see about licensing the</b></p> <p>4 <b>product, is that right?</b></p> <p>5 A That's correct.</p> <p>6 <b>Q Did Quickie do anything to</b></p> <p>7 <b>attempt to commercialize the patent that</b></p> <p>8 <b>was covered by the Medtronic agreement?</b></p> <p>9 MR. LODEN: Objection. Form.</p> <p>10 The reason for the objection, when the</p> <p>11 Medtronic agreement was signed, I</p> <p>12 don't believe there was a patent.</p> <p>13 MR. KAMINSKY: Well, let's</p> <p>14 clarify.</p> <p>15 BY MR. KAMINSKY:</p> <p>16 <b>Q There ultimately was a patent</b></p> <p>17 <b>that was issued on the knotless suture</b></p> <p>18 <b>device, is that right?</b></p> <p>19 A Yes.</p> <p>20 <b>Q It's Patent No. 6,066,160, is</b></p> <p>21 <b>that correct?</b></p> <p>22 A If you say so. I don't have it</p> <p>23 in front of me.</p> <p>24 MR. KAMINSKY: Can we show the</p> <p>25 witness Exhibit 55?</p>	<p style="text-align: right;">Page 32</p> <p>1 Fell</p> <p>2 <b>license this patent, which we'll refer to</b></p> <p>3 <b>as the '160 Patent, to anyone else?</b></p> <p>4 A At any point in time?</p> <p>5 <b>Q Yes.</b></p> <p>6 A Yes, I believe they did.</p> <p>7 <b>Q With whom did Quickie seek to</b></p> <p>8 <b>license?</b></p> <p>9 A Edward Scientific, I believe.</p> <p>10 <b>Q Was Edward Scientific --</b></p> <p>11 A Maybe St. Jude's also.</p> <p>12 <b>Q Did either of those entities</b></p> <p>13 <b>sign a license?</b></p> <p>14 A Not for this patent.</p> <p>15 <b>Q Other than those efforts to</b></p> <p>16 <b>license the patent that we referred to, did</b></p> <p>17 <b>Quickie make any other effort to</b></p> <p>18 <b>commercialize or to seek commercial</b></p> <p>19 <b>royalties or benefits with respect to the</b></p> <p>20 <b>'160 Patent?</b></p> <p>21 A No, but Edwards, I think, was</p> <p>22 very interested, but they were concerned</p> <p>23 about Quickie's -- with Medtronic's ongoing</p> <p>24 rights even after the termination of the</p> <p>25 agreement.</p>
<p style="text-align: right;">Page 31</p> <p>1 Fell</p> <p>2 It's not 55, okay.</p> <p>3 (Whereupon, Exhibit 64 was</p> <p>4 marked for Identification.)</p> <p>5 BY MR. KAMINSKY:</p> <p>6 <b>Q I show you a document marked</b></p> <p>7 <b>Exhibit 64, it's Patent No. 6,066,160,</b></p> <p>8 <b>dated May 23, 2000.</b></p> <p>9 <b>Have you ever seen that document</b></p> <p>10 <b>before?</b></p> <p>11 A Yes.</p> <p>12 <b>Q Is that the patent that was</b></p> <p>13 <b>issued to Quickie for the passive knotless</b></p> <p>14 <b>suture terminator?</b></p> <p>15 A Yes. I think it was issued to</p> <p>16 the inventors and then assigned to Quickie,</p> <p>17 yes.</p> <p>18 <b>Q Is that the patent that was the</b></p> <p>19 <b>subject of the license agreement with</b></p> <p>20 <b>Quickie?</b></p> <p>21 A Yes.</p> <p>22 <b>Q Now has Quickie made any other</b></p> <p>23 <b>effort besides the license agreement with</b></p> <p>24 <b>Medtronic that was terminated and the</b></p> <p>25 <b>approaches to U.S. Surgical and Ethicon to</b></p>	<p style="text-align: right;">Page 33</p> <p>1 Fell</p> <p>2 <b>Q What ongoing rights did</b></p> <p>3 <b>Medtronic have?</b></p> <p>4 A I don't have -- something in the</p> <p>5 agreement that gave them, that they were</p> <p>6 concerned about. I don't recall exactly</p> <p>7 what it was.</p> <p>8 <b>Q Had Medtronic asserted any</b></p> <p>9 <b>rights with respect to the '160 Patent</b></p> <p>10 <b>since it terminated the agreement?</b></p> <p>11 A Not to my knowledge.</p> <p>12 <b>Q Has Quickie used any other</b></p> <p>13 <b>patent counsel since its existence?</b></p> <p>14 A Yes.</p> <p>15 <b>Q Who else did Quickie use as</b></p> <p>16 <b>patent counsel?</b></p> <p>17 A Beside whom? Let's --</p> <p>18 <b>Q Well, you mentioned Todd</b></p> <p>19 <b>Sharinn.</b></p> <p>20 A Okay. Well, Todd Sharinn was</p> <p>21 with several firms, two firms I believe,</p> <p>22 Pepe &amp; Hazard and Greenberg Traurig which</p> <p>23 were each patent counsel to Quickie. Then</p> <p>24 Thelen was involved with the litigation and</p> <p>25 some patent issues as well.</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 34</p> <p>1 Fell</p> <p>2 <b>Q Well, actually Thelen handled</b></p> <p>3 <b>the re-examination proceeding for this same</b></p> <p>4 <b>patent, isn't that correct?</b></p> <p>5 A I believe so, yes. Then there</p> <p>6 was another gentleman named Tim Maier also.</p> <p>7 <b>Q In fact, Thelen was Quickie's</b></p> <p>8 <b>counsel as to the '160 Patent when</b></p> <p>9 <b>maintenance fees first became due on that</b></p> <p>10 <b>patent, isn't that correct?</b></p> <p>11 A I don't remember the date or who</p> <p>12 was counsel when.</p> <p>13 <b>Q Do you remember that maintenance</b></p> <p>14 <b>fees became payable on the '160 Patent</b></p> <p>15 <b>commencing on May 23, 2003 and ending May</b></p> <p>16 <b>23, 2004?</b></p> <p>17 A I wasn't aware of that until</p> <p>18 after I found out that the time had expired</p> <p>19 to pay the fees.</p> <p>20 <b>Q Well, in fact, you were and</b></p> <p>21 <b>we'll show you that you were --</b></p> <p>22 A Okay.</p> <p>23 <b>Q -- aware, but do you remember as</b></p> <p>24 <b>you sit here today that maintenance fees</b></p> <p>25 <b>were due on the patent during the one-year</b></p>	<p style="text-align: right;">Page 36</p> <p>1 Fell</p> <p>2 lawsuit?</p> <p>3 A Yes.</p> <p>4 <b>Q Do you remember they also sued</b></p> <p>5 <b>your law firm?</b></p> <p>6 A Yes, of course.</p> <p>7 <b>Q Do you remember that there were</b></p> <p>8 <b>discovery requests made to your law firm in</b></p> <p>9 <b>connection with the third-party action?</b></p> <p>10 A Yes.</p> <p>11 <b>Q Do you remember that you and</b></p> <p>12 <b>your law firm were asked to admit certain</b></p> <p>13 <b>facts by Greenberg Traurig?</b></p> <p>14 A I don't know for sure. I mean,</p> <p>15 I might have approved an admission that was</p> <p>16 prepared by counsel.</p> <p>17 <b>Q Who represented you in this</b></p> <p>18 <b>action?</b></p> <p>19 A In the malpractice?</p> <p>20 <b>Q In this action that we're here</b></p> <p>21 <b>today about.</b></p> <p>22 A It's Vorys -- I forgot the name</p> <p>23 of the firm -- Pam Bresnahan and her firm.</p> <p>24 MR. LODEN: Just to be clear,</p> <p>25 you're referring to representing</p>
<p style="text-align: right;">Page 35</p> <p>1 Fell</p> <p>2 <b>period commencing May 23, 2003 and ending</b></p> <p>3 <b>approximately May 23, 2004?</b></p> <p>4 MR. LODEN: Objection. Form.</p> <p>5 BY MR. KAMINSKY:</p> <p>6 <b>Q Do you recall that?</b></p> <p>7 MR. LODEN: Same objection.</p> <p>8 A I'm not sure I understand your</p> <p>9 question. You're saying at that time was I</p> <p>10 aware of it or --</p> <p>11 <b>Q Are you aware --</b></p> <p>12 A -- am I aware now?</p> <p>13 <b>Q Yes.</b></p> <p>14 A Yes.</p> <p>15 <b>Q Okay.</b></p> <p>16 <b>Is it correct Thelen was</b></p> <p>17 <b>Quickie's counsel as to the '160 Patent</b></p> <p>18 <b>when the maintenance fee first became due?</b></p> <p>19 A I don't know -- as I said, as I</p> <p>20 testified a little while ago, I don't know</p> <p>21 the specific dates when Pepe &amp; Hazard,</p> <p>22 Greenberg Traurig, Thelen were counsel.</p> <p>23 <b>Q Do you remember that Thelen Reid</b></p> <p>24 <b>Brown Raysman &amp; Steiner filed a third-party</b></p> <p>25 <b>action against you personally in this</b></p>	<p style="text-align: right;">Page 37</p> <p>1 Fell</p> <p>2 Mr. Fell and his law firm as</p> <p>3 third-party defendants in this</p> <p>4 litigation, prior third-party</p> <p>5 defendants?</p> <p>6 MR. KAMINSKY: Yes.</p> <p>7 BY MR. KAMINSKY:</p> <p>8 <b>Q So it's Vorys Sater Seymour &amp;</b></p> <p>9 <b>Pease, correct?</b></p> <p>10 A Okay, correct.</p> <p>11 <b>Q Pam Bresnahan?</b></p> <p>12 A Correct.</p> <p>13 <b>Q And also Nixon Peabody in New</b></p> <p>14 <b>York?</b></p> <p>15 A Local counsel, yes.</p> <p>16 <b>Q Frank Ryan?</b></p> <p>17 A Yes.</p> <p>18 <b>Q Okay. Let me show you a</b></p> <p>19 <b>document we're going to mark Exhibit 65.</b></p> <p>20 <b>(Whereupon, Exhibit 65 was</b></p> <p>21 <b>marked for Identification.)</b></p> <p>22 BY MR. KAMINSKY:</p> <p>23 <b>Q Mr. Fell, Exhibit 65 is a copy</b></p> <p>24 <b>of the Rick Steiner defendants' responses</b></p> <p>25 <b>to Greenberg Traurig's request for</b></p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 38</p> <p>1 <b>Fell</b></p> <p>2 <b>admissions. It's dated according to the</b></p> <p>3 <b>certificate of service March 28, 2008.</b></p> <p>4 <b>Have you ever seen that document</b></p> <p>5 <b>before?</b></p> <p>6 A Yes, I must have. I don't</p> <p>7 recall specifically, but I'm sure I saw it</p> <p>8 before.</p> <p>9 <b>Q Did you discuss with your</b></p> <p>10 <b>counsel -- this is simply a yes or no</b></p> <p>11 <b>question, I don't the details of what you</b></p> <p>12 <b>may have discussed -- did you discuss with</b></p> <p>13 <b>your counsel a response to be made to</b></p> <p>14 <b>Greenberg Traurig's request for admissions</b></p> <p>15 <b>in this action?</b></p> <p>16 A Yes.</p> <p>17 <b>Q Okay.</b></p> <p>18 <b>Now would you look at page 7 and</b></p> <p>19 <b>do you see that requests to admit number 20</b></p> <p>20 <b>was "Thelen was Quickie's counsel as to the</b></p> <p>21 <b>'160 Patent when the maintenance fee first</b></p> <p>22 <b>became due."</b></p> <p>23 <b>Do you see that?</b></p> <p>24 A Uh-huh.</p> <p>25 <b>Q And the response to the request,</b></p>	<p style="text-align: right;">Page 40</p> <p>1 <b>Fell</b></p> <p>2 MR. KAMINSKY: Yes.</p> <p>3 BY MR. KAMINSKY:</p> <p>4 <b>Q Do you see on page 1 that the</b></p> <p>5 <b>defined term the Rick Steiner defendants</b></p> <p>6 <b>means third-party defendants Alan Fell and</b></p> <p>7 <b>Rick Steiner Fell &amp; Benowitz LLP, do you</b></p> <p>8 <b>see that?</b></p> <p>9 A Yes.</p> <p>10 <b>Q Okay.</b></p> <p>11 MR. LODEN: So he's asking you</p> <p>12 as the now dismissed third-party</p> <p>13 defendant, not in your capacity as a</p> <p>14 member or general counsel of Quickie.</p> <p>15 THE WITNESS: Uh-huh.</p> <p>16 BY MR. KAMINSKY:</p> <p>17 <b>Q Do you stand by your admission</b></p> <p>18 <b>in request number 20?</b></p> <p>19 A Yes.</p> <p>20 <b>Q Do you know why there was a</b></p> <p>21 <b>denial in request 21?</b></p> <p>22 A No, I'm not sure, but I'm sure</p> <p>23 that my counsel had good reason for</p> <p>24 comparing it that way.</p> <p>25 <b>Q Okay.</b></p>
<p style="text-align: right;">Page 39</p> <p>1 <b>Fell</b></p> <p>2 <b>which is made on behalf of both you and</b></p> <p>3 <b>your firm who are identified as the Rick</b></p> <p>4 <b>Steiner defendants on page 1 of the</b></p> <p>5 <b>response was: "The Rick Steiner defendants</b></p> <p>6 <b>admit requests to admit number 20."</b></p> <p>7 <b>Do you see that?</b></p> <p>8 A Uh-huh.</p> <p>9 <b>Q Would you look at request to</b></p> <p>10 <b>admit number 21. It's states: "The</b></p> <p>11 <b>maintenance fee was payable during the</b></p> <p>12 <b>one-year period commencing May 23, 2003 and</b></p> <p>13 <b>ending approximately May 23, 2004 (the</b></p> <p>14 <b>one-year period at issue)."</b></p> <p>15 <b>The response to that request</b></p> <p>16 <b>was: "The Rick Steiner defendants deny</b></p> <p>17 <b>that request."</b></p> <p>18 <b>Do you see that?</b></p> <p>19 A Uh-huh.</p> <p>20 <b>Q Now you stand by the admission,</b></p> <p>21 <b>I take it, in respect to request to admit</b></p> <p>22 <b>number 20, is that correct?</b></p> <p>23 MR. LODEN: When you say you,</p> <p>24 are you referring to Mr. Fell as one</p> <p>25 of the Rick Steiner defendants?</p>	<p style="text-align: right;">Page 41</p> <p>1 <b>Fell</b></p> <p>2 <b>Let me read to you some further</b></p> <p>3 <b>requests and responses from this document,</b></p> <p>4 <b>Exhibit 65.</b></p> <p>5 <b>On page 6, request number 18,</b></p> <p>6 <b>the request stated: "The maintenance fee</b></p> <p>7 <b>on the '160 Patent (the maintenance fee)</b></p> <p>8 <b>first became due on May 23, 2003."</b></p> <p>9 <b>The response was: "The Rick</b></p> <p>10 <b>Steiner defendants admit request to admit</b></p> <p>11 <b>number 18."</b></p> <p>12 <b>Do you see that?</b></p> <p>13 A Uh-huh.</p> <p>14 <b>Q Do you stand by that admission?</b></p> <p>15 A This document was prepared by my</p> <p>16 counsel. I reviewed the document probably</p> <p>17 somewhat quickly, but I relied on my</p> <p>18 counsel to prepare the document that was</p> <p>19 valid. I'm not going to at this point</p> <p>20 undermine the document that was prepared by</p> <p>21 my counsel.</p> <p>22 <b>Q So you stand by the document as</b></p> <p>23 <b>you sit here today?</b></p> <p>24 A Yeah.</p> <p>25 <b>Q Okay.</b></p>



12 (Pages 42 to 45)

<p style="text-align: right;">Page 42</p> <p>1 <b>Fell</b></p> <p>2 <b>Now in request number 19, the</b></p> <p>3 <b>request was: "GT was no longer Quickie's</b></p> <p>4 <b>attorney as to the '160 Patent when the</b></p> <p>5 <b>maintenance fee first became due."</b></p> <p>6 <b>And the response was: "The Rick</b></p> <p>7 <b>Steiner defendants admit that GT was no</b></p> <p>8 <b>longer Quickie's attorney as to the '160</b></p> <p>9 <b>Patent as of the date of the revocation;</b></p> <p>10 <b>however, the Rick Steiner defendants deny</b></p> <p>11 <b>that GT had no responsibility for advising</b></p> <p>12 <b>Quickie prior to the revocation that the</b></p> <p>13 <b>maintenance fee for the '160 Patent was</b></p> <p>14 <b>due."</b></p> <p>15 <b>Do you see that?</b></p> <p>16 A Yes, I do.</p> <p>17 <b>Q Now you stand by the first</b></p> <p>18 <b>statement that Rick Steiner defendants</b></p> <p>19 <b>admit that GT was no longer Quickie's</b></p> <p>20 <b>attorneys as to the '160 Patent as of the</b></p> <p>21 <b>date of the revocation, which refers to the</b></p> <p>22 <b>revocation of Greenberg Traurig's authority</b></p> <p>23 <b>to deal with the Patent Office with respect</b></p> <p>24 <b>to the '160 Patent.</b></p> <p>25 <b>Do you stand by that?</b></p>	<p style="text-align: right;">Page 44</p> <p>1 <b>Fell</b></p> <p>2 <b>doing this with you. I don't have to do</b></p> <p>3 <b>this. These are admissions in the case.</b></p> <p>4 A I understand that.</p> <p>5 <b>Q You're being deposed here now,</b></p> <p>6 <b>you're being dismissed, and if there's</b></p> <p>7 <b>going to be any change from what I believe</b></p> <p>8 <b>is a binding admission in any event, I'd</b></p> <p>9 <b>like to know about it now since you're now</b></p> <p>10 <b>a dismissed defendant.</b></p> <p>11 MR. LODEN: And the reason I'm</p> <p>12 making the clarification on the record</p> <p>13 is I don't think it's a foregone</p> <p>14 conclusion that any admissions that</p> <p>15 Rick Steiner made on behalf of a</p> <p>16 now dismissed party are binding on</p> <p>17 anyone other than Rick Steiner.</p> <p>18 MR. KAMINSKY: I don't agree</p> <p>19 with you, but that's why --</p> <p>20 MR. LODEN: Well, that's why I'm</p> <p>21 clarifying the record.</p> <p>22 MR. KAMINSKY: Because you might</p> <p>23 take that position, we're going to go</p> <p>24 through this.</p> <p>25 BY MR. KAMINSKY:</p>
<p style="text-align: right;">Page 43</p> <p>1 <b>Fell</b></p> <p>2 A Yes, but I think I have to</p> <p>3 qualify this because after Greenberg</p> <p>4 Traurig was replaced, they were still doing</p> <p>5 work for Quickie.</p> <p>6 <b>Q All right. I'm going to come to</b></p> <p>7 <b>the rest of this admission.</b></p> <p>8 A But I think that's part of --</p> <p>9 <b>Q Well, you stand by the first</b></p> <p>10 <b>clause, is that correct? You agree that</b></p> <p>11 <b>Greenberg Traurig was no longer Quickie's</b></p> <p>12 <b>attorney to the '160 Patent as of the date</b></p> <p>13 <b>of the revocation, is that correct?</b></p> <p>14 MR. LODEN: Again, just to</p> <p>15 clarify the record, you mean Rick</p> <p>16 Steiner in its capacity as a dismissed</p> <p>17 third-party defendant in this</p> <p>18 litigation, correct?</p> <p>19 MR. KAMINSKY: And you</p> <p>20 personally, both.</p> <p>21 MR. LODEN: Well, as a dismissed</p> <p>22 third-party defendant.</p> <p>23 MR. KAMINSKY: Yes, yes.</p> <p>24 BY MR. KAMINSKY:</p> <p>25 <b>Q I'll explain to you why I'm</b></p>	<p style="text-align: right;">Page 45</p> <p>1 <b>Fell</b></p> <p>2 <b>Q So I take it you stand by the</b></p> <p>3 <b>first clause, and then we'll go to the</b></p> <p>4 <b>second clause -- before I go back to that,</b></p> <p>5 <b>do you know what we're referring to by</b></p> <p>6 <b>revocation?</b></p> <p>7 A I think I had seen it recently.</p> <p>8 <b>Q Do you recall that there was a</b></p> <p>9 <b>revocation of the prior Powers of Attorney</b></p> <p>10 <b>that had been given to Greenberg Traurig by</b></p> <p>11 <b>Quickie?</b></p> <p>12 A Yes.</p> <p>13 <b>Q Do you recall that that</b></p> <p>14 <b>revocation was filed with the United States</b></p> <p>15 <b>Patent and Trademark Office on or about</b></p> <p>16 <b>March 4, 20003?</b></p> <p>17 A I don't remember the specific</p> <p>18 date of the filing, but I remember the</p> <p>19 existence of a revocation.</p> <p>20 <b>Q Let me show you a document which</b></p> <p>21 <b>has been marked Exhibit 56.</b></p> <p>22 <b>Exhibit 56 is a revocation of</b></p> <p>23 <b>prior Powers of Attorney and an appointment</b></p> <p>24 <b>of new attorneys by Quickie signed by</b></p> <p>25 <b>Aubrey Galloway as managing partner of</b></p>



13 (Pages 46 to 49)

<p style="text-align: right;">Page 46</p> <p>1 <b>Fell</b>  2 <b>Quickie on March 4, 2003.</b>  3 <b>Have you ever seen that document</b>  4 <b>before?</b>  5 A Yes.  6 <b>Q Do you understand that that's</b>  7 <b>what we refer to when we're referring to</b>  8 <b>the revocation?</b>  9 A Yes.  10 <b>Q Did you see that document when</b>  11 <b>it was filed?</b>  12 A I don't specifically recall, but  13 I'm sure I did.  14 <b>Q Who retained the Thelen law firm</b>  15 <b>on behalf of Quickie?</b>  16 A I don't understand the question.  17 <b>Q At a certain point the Thelen</b>  18 <b>law firm was retained by Quickie?</b>  19 A By Quickie, I don't understand  20 who retained --  21 <b>Q Which person?</b>  22 A Which person what, signed the  23 retainer agreement? I'm not sure I  24 understand what you're referring to.  25 <b>Q Who acted for Quickie in</b></p>	<p style="text-align: right;">Page 48</p> <p>1 <b>Fell</b>  2 A That wasn't the only reason.  3 <b>Q Who told Greenberg Traurig that</b>  4 <b>they were going to be replaced by the</b>  5 <b>Thelen law firm?</b>  6 A I probably called Todd because I  7 had a personal relationship with Todd  8 before -- I think I sent a letter  9 subsequently to reconfirm, but I think I  10 called him personally to tell him.  11 <b>Q Did you tell him that Dr. Colvin</b>  12 <b>was bothered about Paul Sutton's</b>  13 <b>involvement?</b>  14 A I don't recall.  15 <b>Q You did tell him, however, about</b>  16 <b>Dr. Colvin's personal relationship with</b>  17 <b>Mark Evens, is that correct?</b>  18 A I might have, but he might have  19 known that anyway. I think Mark Evens  20 attended the Markman Hearing where at the  21 point that Todd and his firm was still  22 representing Quickie.  23 <b>Q Didn't you tell Todd Sharinn</b>  24 <b>that the Greenberg firm was going to be</b>  25 <b>replaced because Dr. Colvin wanted to give</b></p>
<p style="text-align: right;">Page 47</p> <p>1 <b>Fell</b>  2 <b>retaining the Thelen law firm?</b>  3 A Who chose the Thelen law firm,  4 is that what you're referring to?  5 <b>Q Well, let's start with that.</b>  6 <b>Who chose the Thelen law firm?</b>  7 A Probably Dr. Colvin and  8 Dr. Galloway.  9 <b>Q Do you know why they chose the</b>  10 <b>Thelen law firm?</b>  11 A I think Dr. Colvin was upset  12 that Paul Sutton who was a patent  13 partner -- I don't know if he's still  14 there -- but Greenberg Traurig had not  15 taken a more active role in the case and  16 the other reason as well is that there was  17 a partner at Thelen that was a relative, a  18 cousin, I think, of Dr. Colvin's then  19 girlfriend.  20 <b>Q Isn't it a fact that Mark Evens</b>  21 <b>who was a partner at the Thelen law firm</b>  22 <b>became a relative of Dr. Colvin?</b>  23 A Yes, that's correct.  24 <b>Q And isn't that why the business</b>  25 <b>was shifted to the Thelen law firm?</b></p>	<p style="text-align: right;">Page 49</p> <p>1 <b>Fell</b>  2 <b>the business to his relative?</b>  3 A I don't recall.  4 <b>Q One way or the other?</b>  5 A I don't recall saying that, no.  6 <b>Q How often did you speak to Todd</b>  7 <b>Sharinn during the period in which he</b>  8 <b>represented Quickie?</b>  9 A During the litigation or during  10 the, before the litigation?  11 <b>Q At any point?</b>  12 A Well, during the litigation I  13 spoke to him probably more frequently.  14 After the contract, the  15 agreement with Medtronics was negotiated,  16 you know, I might have spoken to him less  17 frequently. I don't recall how frequently.  18 But he was also working on other IP matters  19 not related to --  20 <b>Q But you don't recall how</b>  21 <b>frequently you spoke to him?</b>  22 A No, I don't.  23 <b>Q Now let's go back to the</b>  24 <b>admissions that are here.</b>  25 <b>Now as you've explained, you</b></p>

14 (Pages 50 to 53)

<p style="text-align: right;">Page 50</p> <p>1 <b>Fell</b></p> <p>2 <b>knew that Quickie had filed a revocation</b></p> <p>3 <b>notice with the U.S. Patent Office in March</b></p> <p>4 <b>of 2002, correct?</b></p> <p>5 MR. LODEN: Objection. Form.</p> <p>6 A Are we at admission 19 still, or</p> <p>7 where are we?</p> <p>8 Q <b>Well, actually if you want to</b></p> <p>9 <b>get that admission, go back to admission</b></p> <p>10 <b>number 2.</b></p> <p>11 A I'm just trying to have the same</p> <p>12 frame of reference.</p> <p>13 Q <b>I'm not at the moment reading</b></p> <p>14 <b>you an admission. I'm just making clear.</b></p> <p>15 A Okay.</p> <p>16 Q <b>You were aware in March 2003</b></p> <p>17 <b>that Quickie had filed a revocation of</b></p> <p>18 <b>Greenberg Traurig's authority with respect</b></p> <p>19 <b>to the '160 Patent with the U.S. Patent and</b></p> <p>20 <b>Trademark Office, correct?</b></p> <p>21 A Correct.</p> <p>22 Q <b>And you were aware that in that</b></p> <p>23 <b>document Quickie had designated the Thelen</b></p> <p>24 <b>lawyers as the lawyers with whom the Patent</b></p> <p>25 <b>Office should deal thenceforth with respect</b></p>	<p style="text-align: right;">Page 52</p> <p>1 <b>Fell</b></p> <p>2 <b>office that Greenberg Traurig had been</b></p> <p>3 <b>replaced as counsel with respect to the</b></p> <p>4 <b>'160 Patent?</b></p> <p>5 A I don't recall, but based on the</p> <p>6 revocation I'm assuming that they were</p> <p>7 notified.</p> <p>8 Q <b>When did you first hear about</b></p> <p>9 <b>that?</b></p> <p>10 A When did I first hear about</p> <p>11 what?</p> <p>12 Q <b>That Mr. Sharinn had received</b></p> <p>13 <b>such a notification from the U.S. Patent</b></p> <p>14 <b>office.</b></p> <p>15 A I don't know. I don't remember</p> <p>16 specifically.</p> <p>17 Q <b>Do you remember receiving a</b></p> <p>18 <b>letter from Mr. Sharinn enclosing a copy of</b></p> <p>19 <b>the revocation notice?</b></p> <p>20 A I don't remember, but it's a</p> <p>21 possibility that I received it.</p> <p>22 Q <b>Let me show you a document that</b></p> <p>23 <b>was pre-marked Exhibit 27.</b></p> <p>24 A Uh-huh.</p> <p>25 Q <b>Exhibit 27 is a letter to</b></p>
<p style="text-align: right;">Page 51</p> <p>1 <b>Fell</b></p> <p>2 <b>to the '160 Patent, correct?</b></p> <p>3 A Correct.</p> <p>4 Q <b>Did you discuss that with anyone</b></p> <p>5 <b>at Quickie at the time?</b></p> <p>6 A I probably discussed it with</p> <p>7 Dr. Galloway and Dr. Colvin. I don't have</p> <p>8 a specific recollection of a conversation</p> <p>9 that I had.</p> <p>10 Q <b>Did you discuss it with the</b></p> <p>11 <b>Thelen lawyers?</b></p> <p>12 A I probably spoke to Mark Evans.</p> <p>13 I didn't have much interaction with</p> <p>14 Mr. Krebs.</p> <p>15 Q <b>Did you discuss that with Todd</b></p> <p>16 <b>Sharinn at the time?</b></p> <p>17 A I already testified that I</p> <p>18 called Todd Sharinn and told him that</p> <p>19 Greenberg Traurig was going to be replaced</p> <p>20 as attorneys in connection with the Quickie</p> <p>21 litigation. I don't know if I've had</p> <p>22 conversation after that. I probably spoke</p> <p>23 to Todd, I did speak to him after that.</p> <p>24 Q <b>Do you recall that Mr. Sharinn</b></p> <p>25 <b>received a notification from the patent</b></p>	<p style="text-align: right;">Page 53</p> <p>1 <b>Fell</b></p> <p>2 <b>Quickie, care of Rick Steiner, dated May</b></p> <p>3 <b>15, 2003.</b></p> <p>4 <b>Do you recall receiving that</b></p> <p>5 <b>letter?</b></p> <p>6 A Not specifically, but I'm sure I</p> <p>7 did.</p> <p>8 Q <b>Do you see that it's addressed</b></p> <p>9 <b>to "Dear Alan"?</b></p> <p>10 A Yes, of course.</p> <p>11 Q <b>Do you see that it refers to the</b></p> <p>12 <b>re-examination of the U.S. Patent No.</b></p> <p>13 <b>6,066,160?</b></p> <p>14 <b>Do you see that?</b></p> <p>15 A Yes, I do.</p> <p>16 Q <b>That's the '160 Patent, correct?</b></p> <p>17 A Correct.</p> <p>18 Q <b>Do you see that it encloses a</b></p> <p>19 <b>notice to Mr. Sharinn of Greenberg Traurig</b></p> <p>20 <b>that is dated April 2, 2003, and it states</b></p> <p>21 <b>that the Power of Attorney to you in this</b></p> <p>22 <b>application has been revoked?</b></p> <p>23 <b>Do you see that?</b></p> <p>24 A Yes.</p> <p>25 Q <b>Do you see it says future</b></p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 54</p> <p>1 <b>Fell</b></p> <p>2 <b>correspondence will be mailed to the new</b></p> <p>3 <b>attorney of record?</b></p> <p>4 <b>Do you see that?</b></p> <p>5 A Yes, I do.</p> <p>6 <b>Q New attorney of record were the</b></p> <p>7 <b>Thelen lawyers, is that correct?</b></p> <p>8 A Correct.</p> <p>9 <b>Q Did you have any conversation</b></p> <p>10 <b>with Mr. Sharinn after you received this</b></p> <p>11 <b>letter about this letter and the notice</b></p> <p>12 <b>that it contained?</b></p> <p>13 A I have no recollection of</p> <p>14 conversations I might have had with</p> <p>15 Mr. Sharinn at that time.</p> <p>16 <b>Q Did you call Mr. Sharinn up and</b></p> <p>17 <b>say to him, Todd, thanks for sending me</b></p> <p>18 <b>this notice, but we're still going to be</b></p> <p>19 <b>looking to you about the '160 Patent? Did</b></p> <p>20 <b>you ever have that conversation with him?</b></p> <p>21 A I don't recall.</p> <p>22 <b>Q You don't recall ever having</b></p> <p>23 <b>that conversation, do you?</b></p> <p>24 A Right.</p> <p>25 <b>Q Now in request number 3 -- I'm</b></p>	<p style="text-align: right;">Page 56</p> <p>1 <b>Fell</b></p> <p>2 this admission.</p> <p>3 <b>Q Do you stand by everything</b></p> <p>4 <b>that's in this request to admit?</b></p> <p>5 MR. LODEN: Have you looked at</p> <p>6 it from page to page?</p> <p>7 A I haven't. I haven't gone over</p> <p>8 it. I mean, as I say, I might have looked</p> <p>9 at it some time ago, but I haven't looked</p> <p>10 at it in a long time.</p> <p>11 <b>Q Well, let's go through some more</b></p> <p>12 <b>items in it, okay?</b></p> <p>13 A Sure.</p> <p>14 <b>Q Now as we pointed out earlier,</b></p> <p>15 <b>in response to request number 19, the first</b></p> <p>16 <b>clause of the Rick Steiner defendants, that</b></p> <p>17 <b>is you and your law firm, stated: "The</b></p> <p>18 <b>Rick Steiner defendants admit that GT was</b></p> <p>19 <b>no longer Quickie's attorney as to the '160</b></p> <p>20 <b>Patent as of the date of the revocation."</b></p> <p>21 <b>Correct?</b></p> <p>22 A Correct.</p> <p>23 <b>Q And you stand by that as you sit</b></p> <p>24 <b>here today, is that correct?</b></p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 55</p> <p>1 <b>Fell</b></p> <p>2 <b>sorry, request number 4, in Exhibit 65, you</b></p> <p>3 <b>and your law firm --</b></p> <p>4 A I'm sorry, this exhibit is</p> <p>5 not -- oh, it is, it's on the bottom.</p> <p>6 Go ahead, I'm listening.</p> <p>7 <b>Q You and your law firm were asked</b></p> <p>8 <b>to admit "in the revocation" -- referring</b></p> <p>9 <b>to the document we just mentioned a moment</b></p> <p>10 <b>ago -- "Quickie appointed Robert Krebs and</b></p> <p>11 <b>others attorney at Thelen Reid &amp; Priest</b></p> <p>12 <b>(referred to collectively with its</b></p> <p>13 <b>successor Thelen Reid Brown Raysman &amp;</b></p> <p>14 <b>Steiner LLP as "Thelen") as the new</b></p> <p>15 <b>attorneys for Quickie with respect to the</b></p> <p>16 <b>'160 Patent to 'prosecute and transact all</b></p> <p>17 <b>business' in the PTO."</b></p> <p>18 <b>And the response was: "The Rick</b></p> <p>19 <b>Steiner defendants admit request to admit</b></p> <p>20 <b>number 4."</b></p> <p>21 <b>Do you see that?</b></p> <p>22 A Yes.</p> <p>23 <b>Q Do you stand by that admission</b></p> <p>24 <b>as you testify today?</b></p> <p>25 A As I said earlier, I'll stand by</p>	<p style="text-align: right;">Page 57</p> <p>1 <b>Fell</b></p> <p>2 <b>Q Now the second part of your</b></p> <p>3 <b>response was that the Rick Steiner</b></p> <p>4 <b>defendants denied that GT, referring to</b></p> <p>5 <b>Greenberg Traurig, had no responsibility</b></p> <p>6 <b>for advising Quickie prior to the</b></p> <p>7 <b>revocation that the maintenance fee for the</b></p> <p>8 <b>'160 Patent was due.</b></p> <p>9 <b>Do you see that?</b></p> <p>10 A Uh-huh.</p> <p>11 <b>Q Okay.</b></p> <p>12 <b>What is the basis for that</b></p> <p>13 <b>response?</b></p> <p>14 A Because I think that Greenberg</p> <p>15 Traurig and Todd Sharinn had retained</p> <p>16 certain responsibilities with regard to</p> <p>17 Quickie and they were still doing work</p> <p>18 after they were replaced by Thelen.</p> <p>19 <b>Q Okay.</b></p> <p>20 <b>Do you remember what I read to</b></p> <p>21 <b>you before, request number 18, would you</b></p> <p>22 <b>look at that again, which was admitted and</b></p> <p>23 <b>that is that the maintenance fee first</b></p> <p>24 <b>became due on May 23, 2003.</b></p> <p>25 <b>Do you see that?</b></p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 58</p> <p>1 <b>Fell</b></p> <p>2 A Yes.</p> <p>3 <b>Q The revocation, as you saw, was</b></p> <p>4 <b>on March 4, 2003, correct?</b></p> <p>5 A Uh-huh.</p> <p>6 <b>Q Right.</b></p> <p>7 <b>So the revocation occurred</b></p> <p>8 <b>before the maintenance fee became due,</b></p> <p>9 <b>isn't that right?</b></p> <p>10 A Yes.</p> <p>11 <b>Q So on what basis do the Rick</b></p> <p>12 <b>Steiner defendants or you say that</b></p> <p>13 <b>Greenberg Traurig had a responsibility to</b></p> <p>14 <b>advise Quickie prior to the revocation on</b></p> <p>15 <b>March 4 that the maintenance fee for the</b></p> <p>16 <b>'160 Patent was due and the maintenance fee</b></p> <p>17 <b>did not become due until May 2004, two</b></p> <p>18 <b>months later?</b></p> <p>19 A Because I think they, as I just</p> <p>20 testified, I think Greenberg had retained</p> <p>21 certain work that they were doing for</p> <p>22 Quickie relating to IP and I think this was</p> <p>23 their responsibility as well.</p> <p>24 <b>Q So prior to the revocation, I</b></p> <p>25 <b>should have told you that a maintenance fee</b></p>	<p style="text-align: right;">Page 60</p> <p>1 <b>Fell</b></p> <p>2 <b>Exhibit 21 is a letter from the</b></p> <p>3 <b>Pepe &amp; Hazard law firm, dated May 30, 2000,</b></p> <p>4 <b>to Stephen Colvin and it shows a CC on the</b></p> <p>5 <b>second page to Alan Fell.</b></p> <p>6 <b>You received a copy of that</b></p> <p>7 <b>letter, isn't that right?</b></p> <p>8 A I'm sure I did.</p> <p>9 <b>Q Now do you see that in the</b></p> <p>10 <b>second page, in the paragraph that's there,</b></p> <p>11 <b>that the letter tells you that the fees are</b></p> <p>12 <b>due on or before three and a half, seven</b></p> <p>13 <b>and a half and eleven and a half years from</b></p> <p>14 <b>the date of the patent, from the date the</b></p> <p>15 <b>patent issues?</b></p> <p>16 <b>Do you see that?</b></p> <p>17 A I see that.</p> <p>18 <b>Q Now you were looking to</b></p> <p>19 <b>Mr. Sharinn to advise you of that, you're</b></p> <p>20 <b>saying, is that right?</b></p> <p>21 A It says in the letter: "We will</p> <p>22 notify you regarding payment of the</p> <p>23 maintenance fees several months before they</p> <p>24 are due," and that's what I was relying on.</p> <p>25 <b>Q Now did you diary at any time --</b></p>
<p style="text-align: right;">Page 59</p> <p>1 <b>Fell</b></p> <p>2 <b>that was not yet due was due -- is that</b></p> <p>3 <b>what you're saying?</b></p> <p>4 MR. LODEN: Objection. Form.</p> <p>5 A At some point they should have</p> <p>6 told us that the maintenance fee was due.</p> <p>7 <b>Q Now, in fact, you knew yourself</b></p> <p>8 <b>that a maintenance fee was going to be due</b></p> <p>9 <b>about that time, didn't you?</b></p> <p>10 A I don't think I was aware of it,</p> <p>11 otherwise I would have made arrangements to</p> <p>12 pay it.</p> <p>13 <b>Q Weren't you told that when the</b></p> <p>14 <b>patent was first issued?</b></p> <p>15 A I probably was when the patent</p> <p>16 was first issued, but I was relying on</p> <p>17 patent counsel to provide me with a notice</p> <p>18 or inform me in some way.</p> <p>19 <b>Q Well, my question is whether you</b></p> <p>20 <b>knew it. You did know it, didn't you?</b></p> <p>21 A If I knew it, I would have made</p> <p>22 arrangements to file the patent, the</p> <p>23 maintenance fee.</p> <p>24 <b>Q Let me show you a document</b></p> <p>25 <b>that's been marked Exhibit 21.</b></p>	<p style="text-align: right;">Page 61</p> <p>1 <b>Fell</b></p> <p>2 A I didn't diary this, no. I was</p> <p>3 relying on patent counsel to notify me.</p> <p>4 <b>Q Now, in fact, you were reminded</b></p> <p>5 <b>that patent fees were due three and a half</b></p> <p>6 <b>years after patent issued before the patent</b></p> <p>7 <b>fees were due in this case, weren't you?</b></p> <p>8 MR. LODEN: Objection. Form.</p> <p>9 If you understand it.</p> <p>10 A I don't understand the question.</p> <p>11 <b>Q Did you understand that there</b></p> <p>12 <b>was a one-year period in which to pay the</b></p> <p>13 <b>patent fees?</b></p> <p>14 MR. LODEN: Objection. Form.</p> <p>15 A I was relying on patent counsel</p> <p>16 to notify me.</p> <p>17 <b>Q I understand what you say you're</b></p> <p>18 <b>relying on, Mr. Fell, but what I want to</b></p> <p>19 <b>find out is what you knew.</b></p> <p>20 A I didn't know, okay?</p> <p>21 <b>Q You didn't know?</b></p> <p>22 A I received this letter. I</p> <p>23 didn't diary. I was relying on patent</p> <p>24 counsel to notify me.</p> <p>25 <b>Q Did you talk to Thelen Reid &amp;</b></p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 62</p> <p>1 <b>Fell</b></p> <p>2 <b>Priest, your new patent counsel, as of</b></p> <p>3 <b>March 2003 about the patent ever?</b></p> <p>4 MR. LODEN: Objection. Form.</p> <p>5 A Yes.</p> <p>6 <b>Q And you were relying on Thelen</b></p> <p>7 <b>Reid &amp; Priest to tell you that the patent</b></p> <p>8 <b>fees were due, weren't you?</b></p> <p>9 A I was relying on patent counsel,</p> <p>10 whoever they were.</p> <p>11 <b>Q And that's Thelen Reid &amp; Priest</b></p> <p>12 <b>after Greenberg Traurig's authority was</b></p> <p>13 <b>revoked with respect to the '160 Patent,</b></p> <p>14 <b>correct?</b></p> <p>15 A I still think that Greenberg</p> <p>16 Traurig retained certain responsibilities</p> <p>17 with regard to the patent.</p> <p>18 <b>Q Thelen Reid &amp; Priest, the Thelen</b></p> <p>19 <b>firm, was Quickie's counsel as to the '160</b></p> <p>20 <b>Patent when the maintenance fee first</b></p> <p>21 <b>became due, correct?</b></p> <p>22 A Yes.</p> <p>23 <b>Q And GT, that's Greenberg</b></p> <p>24 <b>Traurig, and Mr. Sharinn, were no longer</b></p> <p>25 <b>Quickie's attorneys as to the '160 Patent</b></p>	<p style="text-align: right;">Page 64</p> <p>1 <b>Fell</b></p> <p>2 <b>could have been paid."</b></p> <p>3 <b>The response is: "The Rick</b></p> <p>4 <b>Steiner defendants admit request to admit</b></p> <p>5 <b>number 22."</b></p> <p>6 A Uh-huh.</p> <p>7 <b>Q You stand by that statement,</b></p> <p>8 <b>don't you?</b></p> <p>9 MR. LODEN: Objection. Form.</p> <p>10 For the same basis that we talked</p> <p>11 about earlier. Who is you?</p> <p>12 BY MR. KAMINSKY:</p> <p>13 <b>Q You, Alan Fell.</b></p> <p>14 A Yeah, I stand by that.</p> <p>15 <b>Q Both personally and on behalf of</b></p> <p>16 <b>your firm, is that right?</b></p> <p>17 A Yes.</p> <p>18 <b>Q Now the next request said:</b></p> <p>19 <b>"Thelen was Quickie's counsel during the</b></p> <p>20 <b>one-year period in issue when the</b></p> <p>21 <b>maintenance fee was due and could have been</b></p> <p>22 <b>paid."</b></p> <p>23 <b>And the response was: "The Rick</b></p> <p>24 <b>Steiner defendants deny request to admit</b></p> <p>25 <b>number 15."</b></p>
<p style="text-align: right;">Page 63</p> <p>1 <b>Fell</b></p> <p>2 <b>when the '160 Patent maintenance fees</b></p> <p>3 <b>became due, isn't that correct?</b></p> <p>4 A I still think that Greenberg</p> <p>5 Traurig was handling certain matters with</p> <p>6 regard to the '160 Patent, including the</p> <p>7 maintenance fees.</p> <p>8 <b>Q Can you answer my question,</b></p> <p>9 <b>please?</b></p> <p>10 <b>Greenberg Traurig was no longer</b></p> <p>11 <b>Quickie's attorney as to the '160 Patent</b></p> <p>12 <b>during the period when the maintenance fee</b></p> <p>13 <b>was due and could have been paid, isn't</b></p> <p>14 <b>that correct?</b></p> <p>15 A I don't know if that's</p> <p>16 completely correct.</p> <p>17 <b>Q Okay.</b></p> <p>18 <b>Would you look at request number</b></p> <p>19 <b>22?</b></p> <p>20 A Sure.</p> <p>21 <b>Q Okay.</b></p> <p>22 <b>Page 7. The request says: "GT</b></p> <p>23 <b>was no longer Quickie's attorney as to the</b></p> <p>24 <b>'160 Patent during the one-year period in</b></p> <p>25 <b>issue when the maintenance fee was due and</b></p>	<p style="text-align: right;">Page 65</p> <p>1 <b>Fell</b></p> <p>2 A I'm sorry, you're at 15?</p> <p>3 <b>Q Forgive me, I'm wrong.</b></p> <p>4 <b>The response was: "The Rick</b></p> <p>5 <b>Steiner defendants admit request to admit</b></p> <p>6 <b>number 23," correct?</b></p> <p>7 A Correct.</p> <p>8 <b>Q And you stand by that statement</b></p> <p>9 <b>as well, don't you?</b></p> <p>10 A Yes.</p> <p>11 <b>Q Now do you remember that Rick</b></p> <p>12 <b>Steiner — strike that.</b></p> <p>13 <b>Do you remember that Quickie</b></p> <p>14 <b>replaced the Thelen law firm after the</b></p> <p>15 <b>patent was deemed to have expired?</b></p> <p>16 A I'm sorry, could you repeat that</p> <p>17 question?</p> <p>18 <b>Q Yes.</b></p> <p>19 <b>Do you remember that after the</b></p> <p>20 <b>'160 Patent had expired for non-payment of</b></p> <p>21 <b>the maintenance fees, Quickie retained</b></p> <p>22 <b>different counsel to replace Thelen?</b></p> <p>23 A Yes.</p> <p>24 <b>Q Do you know the name of the</b></p> <p>25 <b>counsel?</b></p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 66</p> <p>1 <b>Fell</b></p> <p>2 A I think it was Maier &amp; Maier.</p> <p>3 <b>Q Did you have anything to do with</b></p> <p>4 <b>the retention of Maier &amp; Maier?</b></p> <p>5 A What do you mean did I have</p> <p>6 anything to do with?</p> <p>7 <b>Q Did you interview Maier &amp; Maier?</b></p> <p>8 A I spoke to Tim Maier on the</p> <p>9 phone.</p> <p>10 <b>Q Who on behalf of Quickie chose</b></p> <p>11 <b>to retain Maier &amp; Maier?</b></p> <p>12 A Dr. Colvin and Galloway.</p> <p>13 <b>Q Did you recommend the Maier &amp;</b></p> <p>14 <b>Maier firm?</b></p> <p>15 A No.</p> <p>16 <b>Q How did Quickie come to meet</b></p> <p>17 <b>Mr. Maier?</b></p> <p>18 A I think Mark Evens had</p> <p>19 recommended Mr. Maier.</p> <p>20 <b>Q Did you have any dealings with</b></p> <p>21 <b>Mr. Maier while he represented the Quickie</b></p> <p>22 <b>firm?</b></p> <p>23 A I spoke to him on the phone, he</p> <p>24 e-mailed me some documents to review.</p> <p>25 <b>Q Do you remember that the Maier</b></p>	<p style="text-align: right;">Page 68</p> <p>1 <b>Fell</b></p> <p>2 A I probably did.</p> <p>3 <b>Q Did you read the petition?</b></p> <p>4 A I possibly did.</p> <p>5 <b>Q And did you read the supplement</b></p> <p>6 <b>to the petition that was also filed by the</b></p> <p>7 <b>Quickie firm?</b></p> <p>8 A I possibly did.</p> <p>9 <b>Q Maier &amp; Maier filed all of those</b></p> <p>10 <b>papers on behalf of Quickie, is that</b></p> <p>11 <b>correct?</b></p> <p>12 A That's correct.</p> <p>13 <b>Q And they were authorized to do</b></p> <p>14 <b>so, correct?</b></p> <p>15 A Correct.</p> <p>16 <b>Q In fact, they got a specific</b></p> <p>17 <b>limited Power of Attorney authorizing them</b></p> <p>18 <b>to do so, is that right?</b></p> <p>19 A I don't specifically recall, but</p> <p>20 that might be true.</p> <p>21 MR. LODEN: Marty, just so you</p> <p>22 know, whenever you want to take a</p> <p>23 break, I think I can reach out to Alan</p> <p>24 and Skip and see if we can -- we've</p> <p>25 been going about an hour.</p>
<p style="text-align: right;">Page 67</p> <p>1 <b>Fell</b></p> <p>2 <b>firm represented Quickie in connection with</b></p> <p>3 <b>a petition by Quickie for a re-examination</b></p> <p>4 <b>or a resuscitation --</b></p> <p>5 A I don't think it's</p> <p>6 re-examination. I think it was --</p> <p>7 <b>Q -- or revival of the patent,</b></p> <p>8 <b>correct?</b></p> <p>9 A Yes, yes.</p> <p>10 <b>Q Did you review any of the papers</b></p> <p>11 <b>that the Maier firm submitted on behalf of</b></p> <p>12 <b>Quickie in connection with that effort?</b></p> <p>13 A I believe I did.</p> <p>14 <b>Q Do you remember that</b></p> <p>15 <b>Dr. Galloway gave a statement in support of</b></p> <p>16 <b>the petition to revive the patent?</b></p> <p>17 A I don't remember specifically,</p> <p>18 but he is the managing member of Quickie,</p> <p>19 so.....</p> <p>20 <b>Q Do you remember that Todd</b></p> <p>21 <b>Sharinn was also asked to give a statement</b></p> <p>22 <b>in support of the petition?</b></p> <p>23 A I recall that.</p> <p>24 <b>Q Did you read any of those</b></p> <p>25 <b>statements at the time?</b></p>	<p style="text-align: right;">Page 69</p> <p>1 <b>Fell</b></p> <p>2 MR. KAMINSKY: Okay. Whenever</p> <p>3 you want to do it.</p> <p>4 (Discussion held off record.)</p> <p>5 BY MR. KAMINSKY:</p> <p>6 <b>Q Let me show you a document which</b></p> <p>7 <b>has been marked Exhibit 55, and if you</b></p> <p>8 <b>would look at the last two pages of that</b></p> <p>9 <b>document and tell me if that refreshes your</b></p> <p>10 <b>recollection that the Maier &amp; Maier firm</b></p> <p>11 <b>received a Power of Attorney to represent</b></p> <p>12 <b>Quickie in connection with the petition to</b></p> <p>13 <b>revive the '160 Patent.</b></p> <p>14 A Yes.</p> <p>15 <b>Q Let me show you two documents,</b></p> <p>16 <b>Exhibits 52 and 61. Exhibit 61 is the</b></p> <p>17 <b>petition for reconsideration -- strike</b></p> <p>18 <b>that.</b></p> <p>19 <b>Let me also ask you to look at</b></p> <p>20 <b>the first part of Exhibit 55 and tell me if</b></p> <p>21 <b>that is the petition to accept unavoidably</b></p> <p>22 <b>delayed payment of the maintenance fee in</b></p> <p>23 <b>an expired patent.</b></p> <p>24 A Yes.</p> <p>25 <b>Q Did you see that at or about the</b></p>

19 (Pages 70 to 73)

<p style="text-align: right;">Page 70</p> <p>1 <b>Fell</b></p> <p>2 <b>time that it was filed, that is --</b></p> <p>3 A I don't specifically recall, but</p> <p>4 in all likelihood, I did.</p> <p>5 <b>Q Now let me show you a document</b></p> <p>6 <b>that's been marked as Exhibit 52.</b></p> <p>7 <b>Exhibit 52 is a supplement to</b></p> <p>8 <b>the petition that was filed in December</b></p> <p>9 <b>2006.</b></p> <p>10 <b>Did you see that document?</b></p> <p>11 A Yes.</p> <p>12 <b>Q And that was about the time of</b></p> <p>13 <b>the petition proceeding, is that right?</b></p> <p>14 MR. LODEN: I'm sorry, you're on</p> <p>15 52?</p> <p>16 MR. KAMINSKY: 54.</p> <p>17 A This says 52.</p> <p>18 <b>Q I meant 54. My apologies. Let</b></p> <p>19 <b>me start this again.</b></p> <p>20 <b>You saw Exhibit 54, the</b></p> <p>21 <b>supplemental petition, while the</b></p> <p>22 <b>proceedings seeking to revive the patent</b></p> <p>23 <b>were going on, is that correct?</b></p> <p>24 A I have no specific recollection,</p> <p>25 but in all likelihood, I did.</p>	<p style="text-align: right;">Page 72</p> <p>1 <b>Fell</b></p> <p>2 <b>that there was anything incorrect in that</b></p> <p>3 <b>statement?</b></p> <p>4 MR. LODEN: Objection. I just</p> <p>5 caution the witness to the extent that</p> <p>6 gets into attorney client relationship</p> <p>7 or communications, be careful.</p> <p>8 MR. KAMINSKY: Okay.</p> <p>9 MR. LODEN: I think the question</p> <p>10 does get into that topic.</p> <p>11 MR. KAMINSKY: All right.</p> <p>12 As I understand it, Quickie is</p> <p>13 asserting the attorney client</p> <p>14 privilege as to communications with</p> <p>15 respect to legal advice with respect</p> <p>16 to Mr. Fell and his law firm, is that</p> <p>17 correct?</p> <p>18 MR. LODEN: I'm asserting the</p> <p>19 privilege with respect to the question</p> <p>20 you asked of Mr. Fell, and that was</p> <p>21 whether he ever told Dr. Galloway that</p> <p>22 there was anything incorrect in that</p> <p>23 statement.</p> <p>24 MR. KAMINSKY: All right.</p> <p>25 Well, I think I need to know</p>
<p style="text-align: right;">Page 71</p> <p>1 <b>Fell</b></p> <p>2 <b>Q Now let me show you Exhibits 52</b></p> <p>3 <b>and 53, which are statements in support of</b></p> <p>4 <b>the petition that were filed in the Fall of</b></p> <p>5 <b>2006 and their statements by Dr. Galloway</b></p> <p>6 <b>and by Todd Sharinn.</b></p> <p>7 <b>Did you see those documents at</b></p> <p>8 <b>or about that time?</b></p> <p>9 A I have, again, no specific</p> <p>10 recollection, but in all likelihood I did.</p> <p>11 <b>Q Now would you look first at</b></p> <p>12 <b>Exhibit 53, the statement by Dr. Galloway.</b></p> <p>13 <b>Do you see that in paragraph 2</b></p> <p>14 <b>of that statement Dr. Galloway says: "As</b></p> <p>15 <b>managing partner for Quickie LLC, I</b></p> <p>16 <b>retained Robert E. Krebs, et al. of Thelen</b></p> <p>17 <b>Reid &amp; Priest LLP law firm to transact all</b></p> <p>18 <b>post issuance proceedings and</b></p> <p>19 <b>responsibilities in the Patent and</b></p> <p>20 <b>Trademark Office, including but not limited</b></p> <p>21 <b>to re-examination proceedings and timely</b></p> <p>22 <b>payment of the maintenance fee."</b></p> <p>23 <b>Do you see that?</b></p> <p>24 A Yes.</p> <p>25 <b>Q Did you ever tell Dr. Galloway</b></p>	<p style="text-align: right;">Page 73</p> <p>1 <b>Fell</b></p> <p>2 because one cannot assert the</p> <p>3 privilege selectively. Am I correct</p> <p>4 that in this lawsuit Quickie is</p> <p>5 asserting the attorney client</p> <p>6 privilege as to communications between</p> <p>7 Mr. Fell and Quickie and his law firm</p> <p>8 and Quickie that involved legal</p> <p>9 advice?</p> <p>10 MR. LODEN: I think that's</p> <p>11 generally correct.</p> <p>12 MR. KAMINSKY: Okay. It's on</p> <p>13 the basis of that objection that</p> <p>14 you're asking the witness not to</p> <p>15 reveal attorney client communication</p> <p>16 as to this document, correct?</p> <p>17 MR. LODEN: As to the</p> <p>18 question -- yeah, yeah, that's</p> <p>19 correct.</p> <p>20 BY MR. KAMINSKY:</p> <p>21 <b>Q Now I'm going to ask you a</b></p> <p>22 <b>question that calls for a yes or no answer,</b></p> <p>23 <b>and Quickie's counsel can determine whether</b></p> <p>24 <b>to assert an objection to that as well, but</b></p> <p>25 <b>did you ever have any discussion with</b></p>



20 (Pages 74 to 77)

<p style="text-align: right;">Page 74</p> <p>1 <b>Fell</b></p> <p>2 <b>Dr. Galloway about paragraph 2 of the</b></p> <p>3 <b>statement he submitted in support of</b></p> <p>4 <b>Quickie's petition in the Fall of 2006?</b></p> <p>5 MR. LODEN: Yeah, again, Marty,</p> <p>6 I don't want to be obstructionist, but</p> <p>7 I do think even putting the question</p> <p>8 that way to answer yes or no asks him</p> <p>9 to confirm whether or not that topic</p> <p>10 was discussed, which would get into</p> <p>11 privileged communication. So we do</p> <p>12 instruct the witness not to answer.</p> <p>13 BY MR. KAMINSKY:</p> <p>14 <b>Q Are you aware of any statement</b></p> <p>15 <b>by Quickie made to the U.S. Patent Office</b></p> <p>16 <b>ever saying to the U.S. Patent Office that</b></p> <p>17 <b>any of the statements in Dr. Galloway's</b></p> <p>18 <b>statement that has been marked Exhibit 53</b></p> <p>19 <b>were or are incorrect?</b></p> <p>20 A I'm not aware of any.</p> <p>21 <b>Q Now would you look at the</b></p> <p>22 <b>document that we've marked Exhibit 54,</b></p> <p>23 <b>which is the supplement to the petition.</b></p> <p>24 <b>Do you see that on the first</b></p> <p>25 <b>page the document says: "A declaration</b></p>	<p style="text-align: right;">Page 76</p> <p>1 <b>Fell</b></p> <p>2 those discussions again involve legal</p> <p>3 advice.</p> <p>4 BY MR. KAMINSKY:</p> <p>5 <b>Q Can you answer without violating</b></p> <p>6 <b>the privilege?</b></p> <p>7 A No.</p> <p>8 <b>Q Did you have any discussion with</b></p> <p>9 <b>the Maier &amp; Maier firm about this statement</b></p> <p>10 <b>in the supplemental petition?</b></p> <p>11 MR. LODEN: Same objection</p> <p>12 again, and there I think it's even</p> <p>13 more clear. If he was talking to</p> <p>14 Maier &amp; Maier, it more than likely</p> <p>15 involved legal advice one way or the</p> <p>16 other. But wait for the witness to</p> <p>17 confirm that to be the case.</p> <p>18 MR. KAMINSKY: Okay.</p> <p>19 Just to simplify things and</p> <p>20 maybe shorten things, may I assume</p> <p>21 that any questions I ask about</p> <p>22 questions regarding these documents</p> <p>23 with Quickie and the Maier &amp; Maier</p> <p>24 firm will be objected to on the basis</p> <p>25 of privilege so that I don't have to</p>
<p style="text-align: right;">Page 75</p> <p>1 <b>Fell</b></p> <p>2 <b>by Todd S. Sharinn is being added as</b></p> <p>3 <b>Exhibit 7."</b></p> <p>4 <b>Do you see that?</b></p> <p>5 A I think it says "to Exhibit 7."</p> <p>6 <b>Q Correct. Do you see that?</b></p> <p>7 A Yes.</p> <p>8 <b>Q Do you see that it continues in</b></p> <p>9 <b>the second sentence and says: "His</b></p> <p>10 <b>responsibility for the '160 Patent ended</b></p> <p>11 <b>prior to the time period when the payment</b></p> <p>12 <b>of a first maintenance fee was due (see</b></p> <p>13 <b>Exhibits 3 and 10, revocation of prior</b></p> <p>14 <b>Powers of Attorney signed on behalf of the</b></p> <p>15 <b>patent owner on March 4, 2003)."</b></p> <p>16 <b>Do you see that?</b></p> <p>17 A Yes.</p> <p>18 <b>Q Did you have any discussion with</b></p> <p>19 <b>anyone at Quickie with respect to that</b></p> <p>20 <b>statement in the supplemental petition?</b></p> <p>21 MR. LODEN: Same objection to</p> <p>22 the extent those discussions involve</p> <p>23 the giving of legal advice, we assert</p> <p>24 the privilege and I instruct the</p> <p>25 witness not to answer, to the extent</p>	<p style="text-align: right;">Page 77</p> <p>1 <b>Fell</b></p> <p>2 go through each one? I am going to go</p> <p>3 through some other statements, but I'd</p> <p>4 rather save us a little time.</p> <p>5 MR. LODEN: I appreciate that.</p> <p>6 I'm not willing to say that any</p> <p>7 question you would ask, because you</p> <p>8 know, we're both creative lawyers, who</p> <p>9 knows what you could come up with.</p> <p>10 But I will say, again, as to</p> <p>11 communications between Mr. Fell in his</p> <p>12 capacity as general counsel for</p> <p>13 Quickie and either other members of</p> <p>14 Quickie or other counsel for Quickie</p> <p>15 concerning the provision of legal</p> <p>16 advice, that those conversations are</p> <p>17 privileged and we are asserting the</p> <p>18 privilege as to those conversations.</p> <p>19 BY MR. KAMINSKY:</p> <p>20 <b>Q What I'm going to do then is</b></p> <p>21 <b>just call your attention, Mr. Fell, to</b></p> <p>22 <b>certain other statements in this document</b></p> <p>23 <b>and then the question I'll ask after that</b></p> <p>24 <b>is whether you're aware of any statement by</b></p> <p>25 <b>Quickie to the U.S. Patent office that</b></p>



21 (Pages 78 to 81)

<p style="text-align: right;">Page 78</p> <p>1 <b>Fell</b></p> <p>2 <b>withdrew or contradicted these statements.</b></p> <p>3 A This is from the 52, 53 and --</p> <p>4 <b>Q This is from 54.</b></p> <p>5 A 54, okay.</p> <p>6 <b>Q I'll read you specific</b></p> <p>7 <b>provisions in the interest of time.</b></p> <p>8 <b>If you would look on the second</b></p> <p>9 <b>page of that exhibit, at the bottom of the</b></p> <p>10 <b>page, the document that is the supplement</b></p> <p>11 <b>to the petition stated to the U.S. Patent</b></p> <p>12 <b>Office that: "Thelen Reid &amp; Priest was</b></p> <p>13 <b>granted and held sole and full power in the</b></p> <p>14 <b>'160 Patent from March 4, 2003 through</b></p> <p>15 <b>August 14, 2006 (Exhibits 3, 9 and 10).</b></p> <p>16 <b>This period of time covered the time period</b></p> <p>17 <b>up to May 23, 2004 for timely paying the</b></p> <p>18 <b>first maintenance fee and the entire 2-year</b></p> <p>19 <b>period starting from the date of the '160</b></p> <p>20 <b>Patent's expiration to file a remedial</b></p> <p>21 <b>petition under the unintentional provision</b></p> <p>22 <b>(37 CFR 1.378(c)); this 2-year expiration</b></p> <p>23 <b>period ending on May 24, 2006."</b></p> <p>24 <b>Do you see that statement?</b></p> <p>25 A Yes, I do.</p>	<p style="text-align: right;">Page 80</p> <p>1 <b>Fell</b></p> <p>2 <b>read: "Thelen Reid &amp; Priest failed to</b></p> <p>3 <b>discover and know that the '160 Patent had</b></p> <p>4 <b>expired when they prepared and filed</b></p> <p>5 <b>amendments to the claims and re-examination</b></p> <p>6 <b>(Exhibit 14). It also appears that Thelen</b></p> <p>7 <b>Reid &amp; Priest failed to docket the patent</b></p> <p>8 <b>for payment of maintenance fees."</b></p> <p>9 <b>Do you see that?</b></p> <p>10 A Yes, I do.</p> <p>11 <b>Q Are you aware of any statement</b></p> <p>12 <b>by Quickie advising the U.S. Patent office</b></p> <p>13 <b>that there was any error in the statements</b></p> <p>14 <b>I just read?</b></p> <p>15 A No.</p> <p>16 <b>Q Would you look on page 4.</b></p> <p>17 <b>Do you see that in the second to</b></p> <p>18 <b>last paragraph the supplemental petition</b></p> <p>19 <b>states: "The patent owner fully believed</b></p> <p>20 <b>that their valuable legal rights in the</b></p> <p>21 <b>'160 Patent would be justly protected by</b></p> <p>22 <b>the attorneys and law firm of Thelen Reid &amp;</b></p> <p>23 <b>Priest when the patent owner chose them for</b></p> <p>24 <b>representation and executed the Power of</b></p> <p>25 <b>Attorney dated March 4, 2003 (see Exhibit</b></p>
<p style="text-align: right;">Page 79</p> <p>1 <b>Fell</b></p> <p>2 <b>Q Are you aware of any statement</b></p> <p>3 <b>by Quickie withdrawing or otherwise stating</b></p> <p>4 <b>to the U.S. Patent office that this prior</b></p> <p>5 <b>statement by Quickie was incorrect?</b></p> <p>6 A The statement by Quickie, no.</p> <p>7 <b>Q Do you see continuing on page 3,</b></p> <p>8 <b>the supplemented petition says: "The</b></p> <p>9 <b>actions and inactions of Thelen Reid &amp;</b></p> <p>10 <b>Priest, Medtronics examination requests" --</b></p> <p>11 A Re-examination requests.</p> <p>12 <b>Q Re-examination requests, thank</b></p> <p>13 <b>you -- "and even the U.S. PTO, led the</b></p> <p>14 <b>patent owner to believe that their '160</b></p> <p>15 <b>Patent was viable."</b></p> <p>16 <b>Do you see that?</b></p> <p>17 A Yes.</p> <p>18 <b>Q And then it continues: "Not</b></p> <p>19 <b>until July 23, 2006 did the patent owner</b></p> <p>20 <b>first learn that their valuable '160 Patent</b></p> <p>21 <b>had expired."</b></p> <p>22 <b>Do you see that?</b></p> <p>23 A Yes, I do.</p> <p>24 <b>Q And then continuing on in the</b></p> <p>25 <b>next paragraph, the last two sentences</b></p>	<p style="text-align: right;">Page 81</p> <p>1 <b>Fell</b></p> <p>2 <b>9). Unfortunately that did not occur --</b></p> <p>3 A Such did not occur.</p> <p>4 <b>Q -- such did not occur."</b></p> <p>5 <b>Do you see that?</b></p> <p>6 A Yes.</p> <p>7 <b>Q Are aware of any statement by</b></p> <p>8 <b>Quickie to the U.S. Patent office that</b></p> <p>9 <b>there was any error in the statement I just</b></p> <p>10 <b>read to you?</b></p> <p>11 A No.</p> <p>12 <b>Q The petition was denied, is that</b></p> <p>13 <b>correct?</b></p> <p>14 A Correct.</p> <p>15 <b>Q Do you recall that Quickie then</b></p> <p>16 <b>sought reconsideration of the petition?</b></p> <p>17 A Yes.</p> <p>18 <b>Q And that was also denied, do you</b></p> <p>19 <b>recall that?</b></p> <p>20 A Yes.</p> <p>21 <b>Q Did you ever see the decision of</b></p> <p>22 <b>the Patent Office denying the petition for</b></p> <p>23 <b>reconsideration?</b></p> <p>24 A I believe I did.</p> <p>25 <b>Q Let me show you a document which</b></p>

22 (Pages 82 to 85)

<p style="text-align: right;">Page 82</p> <p>1 <b>Fell</b></p> <p>2 <b>is marked Exhibit 59, and I will also show</b></p> <p>3 <b>you a document which has been marked</b></p> <p>4 <b>Exhibit 60.</b></p> <p>5 <b>Those are the two decisions of</b></p> <p>6 <b>the U.S. Patent Office denying the petition</b></p> <p>7 <b>and the petition for reconsideration, is</b></p> <p>8 <b>that correct?</b></p> <p>9 A I believe so, yes.</p> <p>10 Q Did you read those at the time?</p> <p>11 A I believe I did, yes.</p> <p>12 Q Am I correct that Quickie has</p> <p>13 not filed any further application to the</p> <p>14 U.S. Patent and Trademark Office to seek</p> <p>15 relief from these two decisions?</p> <p>16 MR. LODEN: Objection. Form.</p> <p>17 A Correct.</p> <p>18 Q Now while this was going on,</p> <p>19 Medtronic had asked the U.S. Patent office</p> <p>20 to re-examine the patent and determine</p> <p>21 whether, in fact, all of the claims in the</p> <p>22 patent were actually allowable and</p> <p>23 patentable, is that correct?</p> <p>24 MR. LODEN: Objection. Form.</p> <p>25 A I'm sorry, can you repeat that</p>	<p style="text-align: right;">Page 84</p> <p>1 <b>Fell</b></p> <p>2 <b>February of 2008. It's dated February 20,</b></p> <p>3 <b>2008.</b></p> <p>4 <b>Have you ever seen that document</b></p> <p>5 <b>before?</b></p> <p>6 A I don't specifically recall, but</p> <p>7 I probably did.</p> <p>8 Q Do you see that in the third</p> <p>9 page of that exhibit under part 2 entitled</p> <p>10 summary of action, item 3 states that</p> <p>11 claims 26 and 30 in the patent are</p> <p>12 patentable and are confirmed?</p> <p>13 Do you see that?</p> <p>14 A Just for a second, I don't</p> <p>15 recall seeing this document. This is</p> <p>16 relatively recently, right? This is this</p> <p>17 year?</p> <p>18 Q Yes.</p> <p>19 A I don't actually recall seeing</p> <p>20 this document.</p> <p>21 Q Okay.</p> <p>22 Well, would you turn to the</p> <p>23 third page?</p> <p>24 A Yes.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 83</p> <p>1 <b>Fell</b></p> <p>2 question?</p> <p>3 Q Yes.</p> <p>4 While these proceedings that</p> <p>5 I've just been asking you about were going</p> <p>6 on, Medtronic had asked the U.S. Patent</p> <p>7 office to re-examine the patent and</p> <p>8 determine whether all of the claims in the</p> <p>9 patent were actually allowable and</p> <p>10 patentable, is that correct?</p> <p>11 MR. LODEN: Same objection.</p> <p>12 A That's correct.</p> <p>13 Q And the U.S. Patent Office</p> <p>14 issued two decisions in connection with the</p> <p>15 patent on requests for re-examination by</p> <p>16 Medtronic, is that right?</p> <p>17 A I believe so.</p> <p>18 Q Do you remember that the Patent</p> <p>19 Office significantly narrowed the scope of</p> <p>20 the patent?</p> <p>21 MR. LODEN: Object to the form.</p> <p>22 A I don't remember specifically.</p> <p>23 Q Let me show you a document which</p> <p>24 has been marked Exhibit 63, which is a</p> <p>25 decision of the U.S. Patent office in</p>	<p style="text-align: right;">Page 85</p> <p>1 <b>Fell</b></p> <p>2 A This is a week and a half before</p> <p>3 Dr. Colvin died.</p> <p>4 Q Very recently, correct.</p> <p>5 A Yeah.</p> <p>6 Q The page that's entitled office</p> <p>7 action in ex parte examination, do you see</p> <p>8 that page?</p> <p>9 A Yes, I do.</p> <p>10 Q Do you see that part two</p> <p>11 summarizes the action that was taken by the</p> <p>12 Patent Office?</p> <p>13 A Yes.</p> <p>14 Q Do you see that item 1A notes</p> <p>15 that claims 1 through 34 were subject to</p> <p>16 re-examination?</p> <p>17 A Yes.</p> <p>18 Q There were 34 claims in the</p> <p>19 patent?</p> <p>20 A Uh-huh.</p> <p>21 Q Do you see that item 3 says that</p> <p>22 claims 26 and 30 are patentable and were</p> <p>23 confirmed?</p> <p>24 A Uh-huh.</p> <p>25 Q And then item 4 says that claims</p>

23 (Pages 86 to 89)

<p style="text-align: right;">Page 86</p> <p>1 <b>Fell</b></p> <p>2 <b>1 through 25, 27 through 29, and 31 through</b></p> <p>3 <b>34 were rejected?</b></p> <p>4 A Uh-huh.</p> <p>5 <b>Q Were you advised that all except</b></p> <p>6 <b>two claims in the patent were declared</b></p> <p>7 <b>unpatentable when the re-examination</b></p> <p>8 <b>proceeding was decided?</b></p> <p>9 MR. LODEN: I just caution you</p> <p>10 to the extent your answer does not</p> <p>11 involve --</p> <p>12 A I don't recall seeing this</p> <p>13 decision.</p> <p>14 <b>Q Well, my question really is were</b></p> <p>15 <b>you advised by anyone that, in fact, there</b></p> <p>16 <b>had been such a decision?</b></p> <p>17 A I don't recall being advised by</p> <p>18 anyone.</p> <p>19 <b>Q Do you know if Quickie has taken</b></p> <p>20 <b>any steps to seek an appeal or reverse this</b></p> <p>21 <b>decision that's reflected in Exhibit 63?</b></p> <p>22 A Not to my knowledge.</p> <p>23 <b>Q Do you recall that all the</b></p> <p>24 <b>billings for work that Greenberg Traurig</b></p> <p>25 <b>did for Quickie or its affiliates were sent</b></p>	<p style="text-align: right;">Page 88</p> <p>1 <b>Fell</b></p> <p>2 <b>same members, is that right?</b></p> <p>3 A That's correct.</p> <p>4 <b>Q All of the billings went to you</b></p> <p>5 <b>at Quickie, care of your law firm, do you</b></p> <p>6 <b>remember that?</b></p> <p>7 A Yes.</p> <p>8 <b>Q Why were all the billings simply</b></p> <p>9 <b>sent to you for Quickie for all of those</b></p> <p>10 <b>entities?</b></p> <p>11 MR. LODEN: Object to the form.</p> <p>12 A It's not just Quickie. We're</p> <p>13 talking about Quickie, S&amp;A Rings and</p> <p>14 E-Surge, correct?</p> <p>15 <b>Q Do you remember, though, that</b></p> <p>16 <b>all of the billings were addressed to</b></p> <p>17 <b>you --</b></p> <p>18 A Yes, I already said that.</p> <p>19 <b>Q -- in care of Quickie?</b></p> <p>20 A Care of Quickie?</p> <p>21 <b>Q Yes, the billings were addressed</b></p> <p>22 <b>to you and Quickie at your law firm.</b></p> <p>23 A Yeah, I didn't know that it said</p> <p>24 care of Quickie.</p> <p>25 <b>Q Was that a matter of, just for</b></p>
<p style="text-align: right;">Page 87</p> <p>1 <b>Fell</b></p> <p>2 <b>to you as general counsel of Quickie?</b></p> <p>3 A Yes.</p> <p>4 <b>Q There were actually more than</b></p> <p>5 <b>one entity that was involved, is that</b></p> <p>6 <b>right?</b></p> <p>7 A That's correct.</p> <p>8 <b>Q What other entities was</b></p> <p>9 <b>Greenberg Traurig doing work for?</b></p> <p>10 A I think they were doing work for</p> <p>11 S&amp;A rings and another entity called</p> <p>12 E-Surge. There might have been some other</p> <p>13 entities, but I don't think they did much</p> <p>14 or much happened to it.</p> <p>15 There was something called</p> <p>16 BioSurge, I think, and Quickie Vision or</p> <p>17 something, but I don't -- nothing really</p> <p>18 happened with those entities.</p> <p>19 <b>Q Those entities were all LLCs, is</b></p> <p>20 <b>that correct?</b></p> <p>21 A Correct.</p> <p>22 <b>Q And some of the members of those</b></p> <p>23 <b>entities were different, is that correct?</b></p> <p>24 A Correct.</p> <p>25 <b>Q So that they didn't have all the</b></p>	<p style="text-align: right;">Page 89</p> <p>1 <b>Fell</b></p> <p>2 <b>convenience?</b></p> <p>3 MR. LODEN: Objection. Form.</p> <p>4 A I don't know why it was done</p> <p>5 that way. It should have been the entity,</p> <p>6 care of me or care of my law firm.</p> <p>7 <b>Q Let me show you a document</b></p> <p>8 <b>that's been marked Exhibit 36. It's a</b></p> <p>9 <b>letter to you dated September 24, 2004 --</b></p> <p>10 <b>actually it's addressed to Quickie, care of</b></p> <p>11 <b>Rick Steiner.</b></p> <p>12 <b>Do you see that?</b></p> <p>13 A Yes, I do.</p> <p>14 <b>Q Do you see that it attaches a</b></p> <p>15 <b>summary on the second page of outstanding</b></p> <p>16 <b>invoices owed to Greenberg Traurig, do you</b></p> <p>17 <b>see that?</b></p> <p>18 A Yes, I do.</p> <p>19 <b>Q And again, it's entitled Quickie</b></p> <p>20 <b>LLC, care of Rick Steiner and your law</b></p> <p>21 <b>firm, correct?</b></p> <p>22 A Yes.</p> <p>23 <b>Q Do you see, for example, that</b></p> <p>24 <b>there is a category called general, do you</b></p> <p>25 <b>see that?</b></p>

24 (Pages 90 to 93)

<p style="text-align: right;">Page 90</p> <p>1 <b>Fell</b></p> <p>2 A Uh-huh.</p> <p>3 <b>Q Is it your understanding that</b></p> <p>4 <b>that includes services for some of these</b></p> <p>5 <b>other entities that you talked about</b></p> <p>6 <b>besides Quickie?</b></p> <p>7 A I think the last, the surgical</p> <p>8 drape patent application --</p> <p>9 <b>Q Yes, I'm going to come to that.</b></p> <p>10 A I don't think that's Quickie</p> <p>11 either.</p> <p>12 <b>Q The fourth one, that was not</b></p> <p>13 <b>Quickie either, correct?</b></p> <p>14 A Yeah, that's correct.</p> <p>15 <b>Q Do you remember that the bills</b></p> <p>16 <b>were addressed to Quickie, care of your law</b></p> <p>17 <b>firm?</b></p> <p>18 MR. LODEN: Objection. Form.</p> <p>19 A I don't remember that, I don't</p> <p>20 remember that, but whatever the bills say,</p> <p>21 they say.</p> <p>22 <b>Q For example, let me show you</b></p> <p>23 <b>Exhibit 42.</b></p> <p>24 A Sure.</p> <p>25 <b>Q Exhibit 42 is a copy of a letter</b></p>	<p style="text-align: right;">Page 92</p> <p>1 <b>Fell</b></p> <p>2 A Yes. I think there were a</p> <p>3 couple of times that Dr. Colvin paid</p> <p>4 directly from his own account.</p> <p>5 <b>Q Now at times Mr. Sharinn and</b></p> <p>6 <b>others would write to you on behalf of a</b></p> <p>7 <b>Quickie matter and yet addressed the letter</b></p> <p>8 <b>to you care of a different entity, is that</b></p> <p>9 <b>right?</b></p> <p>10 A I don't recall.</p> <p>11 <b>Q Let me show you Exhibit 44,</b></p> <p>12 <b>which is a letter from Mr. Sharinn to you</b></p> <p>13 <b>dated December 2, 2003. It's addressed to</b></p> <p>14 <b>Alan Fell, S&amp;A Rings, relating to the</b></p> <p>15 <b>concentric passive knotless suture</b></p> <p>16 <b>terminator.</b></p> <p>17 <b>Do you see that?</b></p> <p>18 A Yeah.</p> <p>19 <b>Q The device referred to in the Re</b></p> <p>20 <b>is actually a Quickie device, is that</b></p> <p>21 <b>right?</b></p> <p>22 A That's correct.</p> <p>23 <b>Q It's addressed to you, S&amp;A</b></p> <p>24 <b>Rings, is that right?</b></p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 91</p> <p>1 <b>Fell</b></p> <p>2 <b>to Quickie, care of Rick Steiner, from</b></p> <p>3 <b>Greenberg Traurig in April, and it encloses</b></p> <p>4 <b>an invoice for general services.</b></p> <p>5 <b>Do you see that?</b></p> <p>6 A Yes.</p> <p>7 <b>Q And again, the invoice in the</b></p> <p>8 <b>letter addressed to Quickie, is that right?</b></p> <p>9 A Yeah.</p> <p>10 <b>Q Was that done just as a matter</b></p> <p>11 <b>of convenience?</b></p> <p>12 A I don't know.</p> <p>13 MR. LODEN: Objection.</p> <p>14 BY MR. KAMINSKY:</p> <p>15 <b>Q Did you ever discuss that with</b></p> <p>16 <b>Mr. Sharinn?</b></p> <p>17 A I don't recall discussing it</p> <p>18 with him.</p> <p>19 <b>Q Did you pay the Greenberg</b></p> <p>20 <b>Taurig legal fee bills?</b></p> <p>21 MR. LODEN: On behalf of</p> <p>22 Quickie?</p> <p>23 A Yes, if we had funds.</p> <p>24 <b>Q Did you also pay the bills for</b></p> <p>25 <b>the other attorneys such as Thelen?</b></p>	<p style="text-align: right;">Page 93</p> <p>1 <b>Fell</b></p> <p>2 <b>Q Did you pay any attention to</b></p> <p>3 <b>that when you got the letter?</b></p> <p>4 A I didn't notice. I don't</p> <p>5 remember noticing it at the time.</p> <p>6 <b>Q Do you remember that there are</b></p> <p>7 <b>other letters on which the same kind of</b></p> <p>8 <b>mixing up of names occurred?</b></p> <p>9 MR. LODEN: Object to form.</p> <p>10 A I don't recall specifically. I</p> <p>11 might have brought it to Todd's attention</p> <p>12 at some point, but I don't remember.</p> <p>13 <b>Q Let me show you two documents</b></p> <p>14 <b>that we'll mark as Exhibits 66 and 67.</b></p> <p>15 <b>Exhibit 66 is a letter from</b></p> <p>16 <b>Mr. Sharinn to Alan Fell at S&amp;A Rings, care</b></p> <p>17 <b>of the Rick Steiner law firm, dated</b></p> <p>18 <b>December 3, 2002.</b></p> <p>19 <b>Exhibit 67 is a letter from</b></p> <p>20 <b>Mr. Sharinn to Quickie Vision LLC, care of</b></p> <p>21 <b>the Rick Steiner firm, dated October 14,</b></p> <p>22 <b>2003.</b></p> <p>23 <b>(Whereupon, Exhibits 66 and 67</b></p> <p>24 <b>were marked for Identification.)</b></p> <p>25 A I probably did, don't recall</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 94</p> <p>1 Fell</p> <p>2 specifically, but it would have come to me.</p> <p>3 <b>Q Do you see that both those</b></p> <p>4 <b>documents refer to Quickie devices in the</b></p> <p>5 <b>Re portion of the letter?</b></p> <p>6 A Yes.</p> <p>7 <b>Q Yet, for example, when</b></p> <p>8 <b>discussing the re-examination of the '160</b></p> <p>9 <b>Patent by Medtronic, Mr. Sharinn wrote the</b></p> <p>10 <b>letter to S&amp;A Rings.</b></p> <p>11 <b>Do you see that?</b></p> <p>12 A Yes.</p> <p>13 <b>Q You knew he was referring to a</b></p> <p>14 <b>Quickie device when you got this letter,</b></p> <p>15 <b>didn't you?</b></p> <p>16 A Yeah, I would go by the Re, not</p> <p>17 how it was addressed generally.</p> <p>18 <b>Q Well, you'd actually go by the</b></p> <p>19 <b>body of the letter, wouldn't you?</b></p> <p>20 MR. LODEN: Objection. Form.</p> <p>21 A Yeah, yeah.</p> <p>22 <b>Q Do you see that in Exhibit 67</b></p> <p>23 <b>the letter is addressed to Quickie Vision,</b></p> <p>24 <b>care of your law firm, but it's really</b></p> <p>25 <b>referring to bills for a Quickie patent?</b></p>	<p style="text-align: right;">Page 96</p> <p>1 Fell</p> <p>2 <b>Q So you weren't confused as to</b></p> <p>3 <b>which matters you were talking to him</b></p> <p>4 <b>about, were you?</b></p> <p>5 A I probably could figure it out</p> <p>6 from the substance of the letter. I don't</p> <p>7 recall, you know, what interaction I had</p> <p>8 with regard to these specific letters.</p> <p>9 <b>Q Now returning again to the</b></p> <p>10 <b>period during when maintenance fees were</b></p> <p>11 <b>due on the '160 Patent, Thelen which was --</b></p> <p>12 A I'm sorry, are we going back to</p> <p>13 the admission?</p> <p>14 <b>Q Yes.</b></p> <p>15 <b>During that period when Thelen</b></p> <p>16 <b>was counsel for Quickie with respect to the</b></p> <p>17 <b>'160 Patent, Thelen had an opportunity to</b></p> <p>18 <b>advise Quickie that maintenance fees were</b></p> <p>19 <b>due, isn't that correct?</b></p> <p>20 A Uh-huh, yes, that's correct.</p> <p>21 <b>Q And to make sure that Quickie</b></p> <p>22 <b>paid the maintenance fees, is that right?</b></p> <p>23 A Yes.</p> <p>24 <b>Q Rick Steiner also had an</b></p> <p>25 <b>opportunity during that period to advise</b></p>
<p style="text-align: right;">Page 95</p> <p>1 Fell</p> <p>2 A Right.</p> <p>3 <b>Q Once again, you'd look at the</b></p> <p>4 <b>body of the letter, is that right?</b></p> <p>5 A Yes.</p> <p>6 <b>Q Were you always careful to make</b></p> <p>7 <b>sure that you used the appropriate Re or</b></p> <p>8 <b>address in letters relating to Quickie or</b></p> <p>9 <b>S&amp;A Rings when you communicated with</b></p> <p>10 <b>Mr. Sharinn?</b></p> <p>11 MR. LODEN: Objection. Form.</p> <p>12 A I would try to be specific.</p> <p>13 <b>Q But you're not certain if you</b></p> <p>14 <b>were, is that right?</b></p> <p>15 MR. LODEN: Same objection.</p> <p>16 A I guess I could have made</p> <p>17 mistakes occasionally.</p> <p>18 <b>Q During this period you were</b></p> <p>19 <b>talking to Mr. Sharinn quite frequently,</b></p> <p>20 <b>weren't you?</b></p> <p>21 MR. LODEN: Objection. Form.</p> <p>22 BY MR. KAMINSKY:</p> <p>23 <b>Q 2002 and 2003?</b></p> <p>24 MR. LODEN: Objection. Form.</p> <p>25 A Probably.</p>	<p style="text-align: right;">Page 97</p> <p>1 Fell</p> <p>2 <b>Quickie that the maintenance fees were due,</b></p> <p>3 <b>is that true?</b></p> <p>4 A Well, Quickie had retained</p> <p>5 patent counsel and we were relying on</p> <p>6 patent counsel to notify us as to</p> <p>7 maintenance fees.</p> <p>8 <b>Q And at that time, as stated to</b></p> <p>9 <b>the PTO, your patent counsel for the '160</b></p> <p>10 <b>Patent was the Thelen firm, is that right?</b></p> <p>11 MR. LODEN: Objection. Form.</p> <p>12 A That's right.</p> <p>13 (Recess taken)</p> <p>14 (Resumed 11:10 a.m.)</p> <p>15 BY MR. KAMINSKY:</p> <p>16 <b>Q Now I mentioned to you earlier</b></p> <p>17 <b>that you had been reminded that patent fees</b></p> <p>18 <b>on a patent were due within three and a</b></p> <p>19 <b>half years of the issuance of patent before</b></p> <p>20 <b>the expiration of the period to pay the</b></p> <p>21 <b>patent fees on the '160 Patent.</b></p> <p>22 <b>Do recall me mentioning that?</b></p> <p>23 A Yes, yes.</p> <p>24 <b>Q And you didn't recall being</b></p> <p>25 <b>reminded of that, is that right?</b></p>

26 (Pages 98 to 101)

<p style="text-align: right;">Page 98</p> <p>1 <b>Fell</b></p> <p>2 A Not specifically, no.</p> <p>3 <b>Q Well, let me show you a document</b></p> <p>4 <b>which has been marked as Exhibit 33, which</b></p> <p>5 <b>is a letter to you -- I'm sorry, a letter</b></p> <p>6 <b>to Dr. Colvin which shows a CC to you on</b></p> <p>7 <b>April 13, 2003.</b></p> <p>8 <b>Do you remember getting a copy</b></p> <p>9 <b>of that letter?</b></p> <p>10 A Not specifically, but I'm sure I</p> <p>11 did.</p> <p>12 <b>Q Now that's about the concentric</b></p> <p>13 <b>passive knotless suture terminator,</b></p> <p>14 <b>correct?</b></p> <p>15 A Yeah.</p> <p>16 <b>Q Which is a Quickie patent,</b></p> <p>17 <b>correct?</b></p> <p>18 A Yeah. That's not the '160</p> <p>19 Patent. That's a different patent, the</p> <p>20 '243, we'll call it the '243 perhaps.</p> <p>21 <b>Q '745 -- oh, '243 Patent, yes,</b></p> <p>22 <b>correct.</b></p> <p>23 A '243.</p> <p>24 <b>Q Okay.</b></p> <p>25 <b>Do you see that in that letter</b></p>	<p style="text-align: right;">Page 100</p> <p>1 <b>Fell</b></p> <p>2 A Yes.</p> <p>3 <b>Q What was his role in connection</b></p> <p>4 <b>with the '160 Patent?</b></p> <p>5 A I think he was more of a -- he</p> <p>6 dealt with the Patent Office and the</p> <p>7 re-examination, the Patent Office issues, I</p> <p>8 believe. He was a real patent lawyer.</p> <p>9 <b>Q So he became the patent lawyer</b></p> <p>10 <b>for Quickie, is that right?</b></p> <p>11 MR. LODEN: Objection to form.</p> <p>12 A Yes.</p> <p>13 <b>Q Did you communicate regularly</b></p> <p>14 <b>with Mr. Krebs?</b></p> <p>15 A No.</p> <p>16 <b>Q Did you communicate regularly</b></p> <p>17 <b>with Mr. Evans?</b></p> <p>18 A I communicated occasionally with</p> <p>19 Mr. Evans. I think Dr. Colvin had more</p> <p>20 communications with Mr. Evans than I did.</p> <p>21 <b>Q Was Quickie looking to Mr. Evens</b></p> <p>22 <b>to oversee the patent attorneys in his firm</b></p> <p>23 <b>with respect to the patent matters that</b></p> <p>24 <b>Thelen was handling?</b></p> <p>25 A Oversee, I don't know if that's</p>
<p style="text-align: right;">Page 99</p> <p>1 <b>Fell</b></p> <p>2 <b>on the second page there is a specific</b></p> <p>3 <b>statement --</b></p> <p>4 A I think it's on the first page,</p> <p>5 the bottom of the first page.</p> <p>6 <b>Q Yes, you're correct. On the</b></p> <p>7 <b>first page there is a specific statement</b></p> <p>8 <b>that patent fees would be due three and a</b></p> <p>9 <b>half years from the issuance of the patent?</b></p> <p>10 A Yes.</p> <p>11 <b>Q Mark Evens was an attorney at</b></p> <p>12 <b>the Thelen firm, is that correct?</b></p> <p>13 A That's correct.</p> <p>14 <b>Q And he was the attorney at the</b></p> <p>15 <b>Thelen firm to whom Quickie initially</b></p> <p>16 <b>transferred the proceedings as to the '160</b></p> <p>17 <b>Patent, is that correct?</b></p> <p>18 A I believe so, yes.</p> <p>19 <b>Q What was his role specifically</b></p> <p>20 <b>at the Thelen firm?</b></p> <p>21 A He was, I believe, a patent --</p> <p>22 he was a litigator, but I think he had done</p> <p>23 patent litigation.</p> <p>24 <b>Q You're familiar with the name</b></p> <p>25 <b>Robert Krebs, is that right?</b></p>	<p style="text-align: right;">Page 101</p> <p>1 <b>Fell</b></p> <p>2 the exact word, but he was the initial</p> <p>3 contact person with whom we were introduced</p> <p>4 to at the firm and I think that we would go</p> <p>5 to him first before we'd go to Krebs, I</p> <p>6 think, but I think Dr. Colvin had more</p> <p>7 dealings with Mr. Krebs than I did. I</p> <p>8 think he went to the Patent Office with</p> <p>9 Mr. Krebs on at least one or two occasions.</p> <p>10 <b>Q Do you recall that when</b></p> <p>11 <b>Mr. Quickie took its business away from the</b></p> <p>12 <b>Thelen firm, it transferred that business</b></p> <p>13 <b>to Mr. Evans' new firm in Washington D.C.,</b></p> <p>14 <b>Stern Kessler Goldstein &amp; Fox?</b></p> <p>15 A Yes.</p> <p>16 <b>Q Were you involved in the</b></p> <p>17 <b>decision to transfer the business to</b></p> <p>18 <b>Mr. Evans' new firm?</b></p> <p>19 A I was aware of it because</p> <p>20 Dr. Colvin had made that decision</p> <p>21 primarily. I frankly probably would have</p> <p>22 tried to find a smaller firm in New York</p> <p>23 than a Washington firm.</p> <p>24 <b>Q But Dr. Colvin picked --</b></p> <p>25 A Dr. Colvin picked this firm,</p>

27 (Pages 102 to 105)

<p style="text-align: right;">Page 102</p> <p>1                   Fell</p> <p>2   yes.</p> <p>3   <b>Q   Now are you represented by</b></p> <p>4 <b>counsel as a witness here today?</b></p> <p>5   A   Yes.</p> <p>6   <b>Q   Who is your counsel?</b></p> <p>7   A   Mr. Loden.</p> <p>8   <b>Q   Mr. Loden?</b></p> <p>9   A   Yes.</p> <p>10 <b>Q   So in other words, Quickie's</b></p> <p>11 <b>counsel is now going to represent you if</b></p> <p>12 <b>you testify in this action?</b></p> <p>13   A   That's correct.</p> <p>14       MR. LODEN: Well, just so the</p> <p>15 record is clear, Mr. Fell is a member</p> <p>16 of Quickie. So in that capacity,</p> <p>17 Mr. Fell is my client, just the same</p> <p>18 as Quickie is my client.</p> <p>19       Mr. Fell is also general counsel</p> <p>20 of Quickie. So in the same capacity</p> <p>21 Mr. Fell is my client.</p> <p>22       It's not a new engagement. It</p> <p>23 was an engagement that started when I</p> <p>24 was retained to represent Quickie.</p> <p>25       MR. KAMINSKY: No further</p>	<p style="text-align: right;">Page 104</p> <p>1</p> <p>2                   INDEX OF EXAMINATION</p> <p>3</p> <p>4 WITNESS                               PAGE</p> <p>5 ALAN FELL.....5</p> <p>6</p> <p>7</p> <p>8 EXHIBITS FOR IDENTIFICATION</p> <p>9</p> <p>10 64.....'160 Patent.....31</p> <p>11 65.....Defendant's Responses.....37</p> <p>12 66.....12/3/02 Letter.....93</p> <p>13 67.....10/13/03 Letter.....93</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 103</p> <p>1                   Fell</p> <p>2   questions.</p> <p>3       MR. LODEN: We'll reserve our</p> <p>4 questions for the time of trial.</p> <p>5       MR. KAMINSKY: Thanks very much.</p> <p>6       THE WITNESS: Pleasure.</p> <p>7       (Time noted 11:16 a.m.)</p> <p>8       THE REPORTER: Standing order?</p> <p>9       MR. LODEN: Standing order.</p> <p>10       MR. CHU: Standing order.</p> <p>11       MR. KAMINSKY: Standing order.</p> <p>12       (Time noted 11:17 a.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17                   _____                   ALAN FELL</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Subscribed and sworn to</p> <p>22 before me this     day</p> <p>23 of                 , 2008.</p> <p>24                   _____</p> <p>25</p>	<p style="text-align: right;">Page 105</p> <p>1</p> <p>2                   C E R T I F I C A T E</p> <p>3 STATE OF NEW YORK )</p> <p>4                   : ss</p> <p>5 COUNTY OF QUEENS )</p> <p>6</p> <p>7     I, JOAN URZIA, a Notary Public within</p> <p>8 and for the State of New York, do hereby</p> <p>9 certify:</p> <p>10    That ALAN FELL, the witness whose</p> <p>11 deposition is hereinbefore set forth, was</p> <p>12 duly sworn by me and that such deposition is</p> <p>13 a true record of the testimony given by the</p> <p>14 witness.</p> <p>15    I further certify that I am not related</p> <p>16 to any of the parties to this action by</p> <p>17 blood or marriage, and that I am in no</p> <p>18 way interested in the outcome of this</p> <p>19 matter.</p> <p>20    IN WITNESS WHEREOF, I have hereunto set</p> <p>21 my hand this 20th day of June 2008.</p> <p>22</p> <p>23</p> <p>24</p> <p>25                   _____                   JOAN URZIA, RMR</p>

Alan Fell

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1 Fell

2 yes.

3 Q Now are you represented by  
4 counsel as a witness here today?

5 A Yes.

6 Q Who is your counsel?

7 A Mr. Loden.

8 Q Mr. Loden?

9 A Yes.

10 Q So in other words, Quickie's  
11 counsel is now going to represent you if  
12 you testify in this action?

13 A That's correct.

14 MR. LODEN: Well, just so the  
15 record is clear, Mr. Fell is a member  
16 of Quickie. So in that capacity,  
17 Mr. Fell is my client, just the same  
18 as Quickie is my client.

19 Mr. Fell is also general counsel  
20 of Quickie. So in the same capacity  
21 Mr. Fell is my client.

22 It's not a new engagement. It  
23 was an engagement that started when I  
24 was retained to represent Quickie.

25 MR. KAMINSKY: No further



Alan Fell

Page 103

1 Fell

2 questions.

3 MR. LODEN: We'll reserve our  
4 questions for the time of trial.

5 MR. KAMINSKY: Thanks very much.

6 THE WITNESS: Pleasure.

7 (Time noted 11:16 a.m.)

8 THE REPORTER: Standing order?

9 MR. LODEN: Standing order.

10 MR. CHU: Standing order.

11 MR. KAMINSKY: Standing order.

12 (Time noted 11:17 a.m.)

13

14

15

16

17

ALAN FELL

18

19

20

21 Subscribed and sworn to

22 before me this 22<sup>nd</sup> day

23 of July, 2008.

24

25

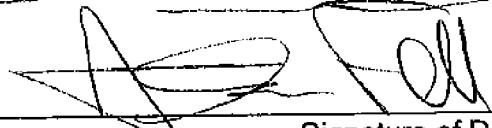
BARBARA EISENMAN  
Notary Public, State Of New York  
No. 01EI6165910  
Qualified In Kings County  
Commission Expires 10/31/10

## ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: Quickie v. Greenberg  
 Dep. Date: June 20, 2008  
 Deponent: Alan Fell

## CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read	Reasons Therefore
7	14	First Disciplinary Committee	Disciplinary Committee	Correction
7	25	Partners in real estate LLCs	I am a member of a number of real estate LLCs	Correction
15	13	Brackfeld	Brachfeld	Correction
15	13	Grassi	Grossi	Correction
15	14	Otto	Oddo	Correction
15	15	Lagfelden	Lagfaged	Correction
18	25	Madeline	Matalon	Correction
19	6	Undermeyer	Untermeyer	Correction
19	9, 10, 11	Friedman	Freedman	Correction
20	14, 16	Grassi	Grossi	Correction
20	20	Chanon	Chanin	Correction

  
 Signature of Deponent

## ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: Quickie v. Greenberg  
 Dep. Date: June 20, 2008  
 Deponent: Alan Fell

## CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read	Reasons Therefore
25	4	Irlinger	Ehrlinger	correction spelling
32	9,10	Edmond	Edwards	correction spelling
40	24	preparing	comparing	correction / grammar
49	9,10	during the	delete during the	correction / grammar
59	22	file the patent	delete file the patent and pay	correction / grammar
84	16	recently	recent	correction / grammar
87,88	12,16,14	ESurge / BioSurge	E-Surg / Bio-Surg	correction / spelling



Signature of Deponent

# **EXHIBIT T**

Page 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
QUICKIE, LLC,

Plaintiff,

vs.

07-CV-10331

GREENBERG TRAURIG, LLC, (RMB) (DFE)

et al.,

Defendants.  
-----

DEPOSITION OF PAUL SUTTON

Tuesday, June 10, 2008

9:30 a.m.

Reported by:

Joan Urzia, RPR

JOB NO. 203573

2 (Pages 2 to 5)

<p style="text-align: right;">Page 2</p> <p>1 2 June 10, 2008 3 9:30 a.m. 4 New York, New York 5 6 7 DEPOSITION of PAUL SUTTON, held 8 at the Offices of Diamond McCarthy, 620 9 Eighth Avenue, New York, New York, pursuant 10 to Notice, before Joan Urzia, a Notary 11 Public of the State of New York. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 IT IS HEREBY STIPULATED AND 3 AGREED, by and between the attorneys 4 for the respective parties herein, that 5 filing and sealing be and the same are 6 hereby waived. 7 IT IS FURTHER STIPULATED AND 8 AGREED that all objections, except as 9 to the form of the question, shall be 10 reserved to the time of the trial. 11 IT IS FURTHER STIPULATED AND 12 AGREED that the within deposition may 13 be sworn to and signed before any 14 officer authorized to administer an 15 oath, with the same force and effect as 16 if signed and sworn to before the 17 Court. 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 2 APPEARANCES: 3 4 5 DIAMOND MCCARTHY, LLP 6 Attorneys for Plaintiff 7 620 Eighth Avenue 8 39th Floor 9 New York, New York 10018 10 BY: STEPHEN T. LODEN, ESQ. 11 WALTER J. SCOTT, ESQ. 12 13 14 POLLACK &amp; KAMINSKY 15 Attorneys for Defendant 16 114 West 47th Street 17 New York, New York 10036 18 BY: MARTIN I. KAMINSKY, ESQ. 19 JUSTIN Y.K. CHU, ESQ. 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 2 PAUL SUTTON, 3 called as a witness, having been duly 4 sworn by a Notary Public, was examined 5 and testified as follows: 6 EXAMINATION BY 7 MR. LODEN: 8 Q. Good morning, Mr. Sutton. 9 A. Good morning. 10 Q. My name is Steve Loden, and along 11 with Skip Scott today, we are here on 12 behalf of Quickie, LLC in the lawsuit that 13 Quickie has brought against Greenberg 14 Traurig. 15 Before we get into the substance, 16 I know that you're an experienced litigator 17 attorney. So I know that you know your way 18 around a deposition. 19 But have you, yourself, ever 20 given a deposition before? 21 A. I have. 22 Q. In what context was that? 23 A. In one or more patent 24 infringement litigations I gave deposition 25 testimony.</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 6</p> <p>1 P. Sutton</p> <p>2 <b>Q. As a fact witness or expert</b></p> <p>3 <b>witness?</b></p> <p>4 A. I believe in both capacities as a</p> <p>5 fact witness -- I believe in both</p> <p>6 capacities.</p> <p>7 <b>Q. Okay.</b></p> <p>8 <b>The one in which you were a fact</b></p> <p>9 <b>witness, were you an attorney handling the</b></p> <p>10 <b>patent at issue, or what made you a fact</b></p> <p>11 <b>witness for that matter?</b></p> <p>12 A. I was a fact witness because I</p> <p>13 had rendered exculpatory opinions that were</p> <p>14 the subject of the litigation.</p> <p>15 <b>Q. And where was that litigation</b></p> <p>16 <b>pending?</b></p> <p>17 A. The Southern District of New</p> <p>18 York.</p> <p>19 <b>Q. And approximately what time</b></p> <p>20 <b>frame?</b></p> <p>21 A. It was several years ago.</p> <p>22 <b>Q. Do you remember the judge?</b></p> <p>23 A. The case was before Judge Kevin</p> <p>24 Duffy.</p> <p>25 <b>Q. Who was the plaintiff?</b></p>	<p style="text-align: right;">Page 8</p> <p>1 P. Sutton</p> <p>2 &amp; Western Corporation.</p> <p>3 <b>Q. And you were an expert on behalf</b></p> <p>4 <b>of Gulf &amp; Western?</b></p> <p>5 A. That's my recollection.</p> <p>6 <b>Q. And what was the subject matter</b></p> <p>7 <b>of your testimony in that litigation?</b></p> <p>8 A. I headed up the patent department</p> <p>9 of Gulf &amp; Western Corporation.</p> <p>10 <b>Q. Okay.</b></p> <p>11 <b>But what was the subject matter?</b></p> <p>12 <b>You said it was expert testimony, right?</b></p> <p>13 A. That's my recollection.</p> <p>14 <b>Q. So on what matters were you</b></p> <p>15 <b>opining as an expert?</b></p> <p>16 A. It's my recollection that it had</p> <p>17 to do with the document procedures at Gulf</p> <p>18 &amp; Western Corporation.</p> <p>19 <b>Q. Can you be more specific, what</b></p> <p>20 <b>sort of document procedures?</b></p> <p>21 A. This is, this could be more than</p> <p>22 30 years ago. I really don't recall.</p> <p>23 <b>Q. Okay.</b></p> <p>24 <b>So the answer is no, you can't be</b></p> <p>25 <b>more specific?</b></p>
<p style="text-align: right;">Page 7</p> <p>1 P. Sutton</p> <p>2 A. Gaus, G-A-U-S, was the name of</p> <p>3 the plaintiff, an individual.</p> <p>4 <b>Q. And the defendant?</b></p> <p>5 A. Con Air Corporation was the</p> <p>6 defendant.</p> <p>7 <b>Q. Okay.</b></p> <p>8 <b>And you said that you also</b></p> <p>9 <b>testified as an expert witness previously?</b></p> <p>10 A. Many years ago.</p> <p>11 <b>Q. Where was that matter pending?</b></p> <p>12 A. I'm not sure I recall where it</p> <p>13 was, but I believe it was within the</p> <p>14 Southern District of New York.</p> <p>15 <b>Q. Do you remember the judge?</b></p> <p>16 A. I do not remember the judge.</p> <p>17 <b>Q. You said several years ago.</b></p> <p>18 <b>Approximately 10, 15?</b></p> <p>19 A. More than 20 years ago.</p> <p>20 <b>Q. And do you remember the plaintiff</b></p> <p>21 <b>in that case?</b></p> <p>22 A. I do not remember the name of the</p> <p>23 plaintiff.</p> <p>24 <b>Q. How about the defendant?</b></p> <p>25 A. I believe the defendant was Gulf</p>	<p style="text-align: right;">Page 9</p> <p>1 P. Sutton</p> <p>2 A. I do not recall.</p> <p>3 <b>Q. What was the issue in that</b></p> <p>4 <b>litigation, if you recall? What was your</b></p> <p>5 <b>employer being sued for?</b></p> <p>6 A. I do not recall.</p> <p>7 <b>Q. Did you -- well, strike that.</b></p> <p>8 <b>Did the matter go to trial?</b></p> <p>9 A. I do not recall whether it was</p> <p>10 settled or it went to trial.</p> <p>11 <b>Q. So then I assume you don't recall</b></p> <p>12 <b>if you testified at trial either then?</b></p> <p>13 A. That's correct.</p> <p>14 <b>Q. Who was -- well, did Gulf &amp;</b></p> <p>15 <b>Western have outside counsel for that</b></p> <p>16 <b>litigation?</b></p> <p>17 A. They did.</p> <p>18 <b>Q. Who was that?</b></p> <p>19 A. I do not recall.</p> <p>20 <b>Q. Any other instances where you've</b></p> <p>21 <b>given a deposition other than the two that</b></p> <p>22 <b>we've just talked about?</b></p> <p>23 A. I remember giving a deposition</p> <p>24 here in New York at opposing counsel's</p> <p>25 offices in a matter involving Leviton</p>

4 (Pages 10 to 13)

<p style="text-align: right;">Page 10</p> <p>1 P. Sutton 2 Manufacturing Company, Inc. 3 <b>Q. And in what capacity were you</b> 4 <b>testifying in that case?</b> 5 A. I believe that I obtained the 6 patent involved in that litigation. 7 <b>Q. I'm sorry, you said it was a</b> 8 <b>matter involving Leviton?</b> 9 A. L-E-V-I-T-O-N. 10 <b>Q. Okay.</b> 11 <b>Was that the plaintiff or</b> 12 <b>defendant?</b> 13 A. I'm not certain. 14 <b>Q. Do you remember the name of the</b> 15 <b>other party involved?</b> 16 A. I don't, I'm sorry. 17 <b>Q. Okay.</b> 18 A. I've literally litigated many 19 dozens of litigations for Leviton. 20 <b>Q. Okay.</b> 21 A. Most of them was where Leviton 22 was the plaintiff. 23 <b>Q. So this was a litigation in which</b> 24 <b>you had obtained the patent on behalf of</b> 25 <b>Leviton and then the patent went into</b></p>	<p style="text-align: right;">Page 12</p> <p>1 P. Sutton 2 <b>Q. Sure.</b> 3 <b>I'm sorry, you may have said this</b> 4 <b>earlier, but approximately what time frame</b> 5 <b>did this litigation take place?</b> 6 A. I'm sorry that I don't recall, 7 but it occurred more than 12 years ago. 8 <b>Q. Is Leviton still a client of</b> 9 <b>yours?</b> 10 A. It is. 11 <b>Q. So then when you left Sutton &amp;</b> 12 <b>Magidoff and went to -- where did you go</b> 13 <b>after that, Thelen?</b> 14 A. Our boutique firm merged with and 15 into what is now known as the Thelen firm, 16 where I headed up their intellectual 17 property practice. 18 <b>Q. So then during the merger, you</b> 19 <b>took Leviton with you as a client, or</b> 20 <b>Leviton was brought into the merged entity</b> 21 <b>as a client?</b> 22 A. Our boutique firm took all of its 23 clients, and those clients chose to remain 24 with us as we merged into and with Thelen 25 by its predecessor firm name Reid &amp; Priest.</p>
<p style="text-align: right;">Page 11</p> <p>1 P. Sutton 2 <b>litigation?</b> 3 A. That's my recollection. 4 <b>Q. And that litigation was here in</b> 5 <b>the Southern District?</b> 6 A. My testimony occurred here in New 7 York. 8 <b>Q. Okay.</b> 9 <b>Where was the litigation pending?</b> 10 A. I'm not certain. Their cases 11 have been all over the country. 12 <b>Q. Was this a litigation that</b> 13 <b>occurred while you were at Greenberg</b> 14 <b>Traurig or at some other firm?</b> 15 A. Prior to my being at Greenberg 16 Traurig. 17 <b>Q. So what firm would that be?</b> 18 A. I believe that litigation 19 occurred during a time when I headed up an 20 IP boutique firm. 21 <b>Q. Which firm was that?</b> 22 A. Over the years its name changed, 23 but its origins were Sutton &amp; Magidoff, 24 M-A-G-I-D-O-F-F, but there were subsequent 25 names as the firm became larger.</p>	<p style="text-align: right;">Page 13</p> <p>1 P. Sutton 2 <b>Q. Okay, right.</b> 3 A. Reid &amp; Priest merged with Thelen 4 Marrin Johnson &amp; Bridges, or a name 5 comparable to that, and its name was 6 changed at that point to Thelen Reid &amp; 7 Priest. 8 <b>Q. And you said that Leviton is</b> 9 <b>still a client of yours today, so I assume</b> 10 <b>they left with you when you left Thelen?</b> 11 A. Leviton chose to move with us 12 from Thelen to Greenberg Traurig. 13 <b>Q. Any other instances in which you</b> 14 <b>recall giving deposition testimony in a</b> 15 <b>litigation?</b> 16 A. Not that I can recall at this 17 moment. 18 <b>Q. Okay.</b> 19 <b>I may have asked you already, if</b> 20 <b>I did, I apologize, but the Leviton matter</b> 21 <b>that we just spoke about, did it go to</b> 22 <b>trial?</b> 23 A. Which matter are you talking 24 about? 25 <b>Q. The one where you obtained the</b></p>



5 (Pages 14 to 17)

<p style="text-align: right;">Page 14</p> <p>1 <b>P. Sutton</b>  2 <b>patent and then you testified at</b>  3 <b>deposition.</b>  4 A. I do not believe that that matter  5 went to trial. I believe that that matter  6 was settled.  7 <b>Q. And you said that other than</b>  8 <b>these three instances, you don't recall any</b>  9 <b>other deposition testimony, correct?</b>  10 A. At this moment, I do not recall  11 anything other than what I've just  12 testified.  13 <b>Q. Okay.</b>  14 <b>Did you keep a transcript of your</b>  15 <b>testimony for any of those depositions we</b>  16 <b>just discussed?</b>  17 A. I did not keep a transcript of  18 any of my prior testimony.  19 <b>Q. If you wanted to obtain a</b>  20 <b>transcript, where would you go?</b>  21 A. I wouldn't want the transcript,  22 and I have no idea if I did, where I would  23 go.  24 <b>Q. Well, for example, when the</b>  25 <b>Leviton -- strike that.</b></p>	<p style="text-align: right;">Page 16</p> <p>1 P. Sutton  2 would have any Leviton records at all.  3 <b>Q. Well, then, what happened to the</b>  4 <b>Leviton records that were not transferred</b>  5 <b>to Greenberg Traurig?</b>  6 A. Those that existed, I believe,  7 were transferred from Thelen to Greenberg  8 Traurig. I would imagine the files that  9 you're questioning me about would have been  10 destroyed or given to the client well,  11 years prior to that time. They would have  12 been sent to James Pearse at the client.  13 <b>Q. Okay.</b>  14 <b>Like I said previously, I know</b>  15 <b>that you've been in depositions before</b>  16 <b>obviously, so I won't go through all the</b>  17 <b>standard rules of the road, as I like to</b>  18 <b>call them, for depositions other than to</b>  19 <b>say that if you don't understand my</b>  20 <b>question, I'm sure there will be instances,</b>  21 <b>please let me know.</b>  22 <b>Is that okay with you?</b>  23 A. It is, and if I could ask you,  24 because I'm slightly hard of hearing, if  25 you speak up, it will help me.</p>
<p style="text-align: right;">Page 15</p> <p>1 <b>P. Sutton</b>  2 <b>When you moved from Thelen to</b>  3 <b>Greenberg and Leviton went with you, did</b>  4 <b>Leviton's files move over to Greenberg as</b>  5 <b>well?</b>  6 A. When I moved from Thelen to  7 Greenberg Traurig, certain of Leviton's  8 files were moved to Greenberg Traurig.  9 <b>Q. Was the file for this particular</b>  10 <b>piece of litigation that we're talking</b>  11 <b>about one of those files that was moved?</b>  12 A. I don't believe it was.  13 <b>Q. Why is that?</b>  14 A. Because it was a matter that  15 occurred many years prior to that and there  16 was no reason to keep it.  17 <b>Q. So the litigation matter had been</b>  18 <b>closed at the time you moved to Greenberg,</b>  19 <b>is that what you're saying?</b>  20 A. That's my recollection.  21 <b>Q. So then if one wanted to look at</b>  22 <b>the litigation file for that matter, he</b>  23 <b>would presume that Thelen would have it</b>  24 <b>then?</b>  25 A. I would not presume that Thelen</p>	<p style="text-align: right;">Page 17</p> <p>1 P. Sutton  2 <b>Q. I will do that. I will do that.</b>  3 <b>If you need a break, say so.</b>  4 <b>We're happy to take breaks as needed.</b>  5 <b>In what capacities are you</b>  6 <b>appearing to testify today?</b>  7 A. I appear as a designated Rule  8 30(b)(6) witness as well as pursuant to a  9 notice that noticed me individually. I  10 understand that I am testifying at present  11 under Rule 30(b)(6). I'm not sure what  12 arrangements you've made with counsel.  13 <b>Q. Sure.</b>  14 <b>We served two 30(b)(6) notices.</b>  15 <b>Are you appearing --</b>  16 MR. LODEN: And we can go ahead  17 and mark them, I guess, and then we'll  18 talk about them.  19 (Exhibit 1, 30(b)(6) Notice of  20 Greenberg Traurig, marked for  21 identification, as of this date.)  22 BY MR. LODEN:  23 <b>Q. Mr. Sutton, I've just handed you</b>  24 <b>what's been marked as Exhibit 1, which is a</b>  25 <b>30(b)(6) Notice of Greenberg Traurig.</b></p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 18</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>If you turn to the last page, it</b></p> <p>3 <b>lists the items on which the notice will</b></p> <p>4 <b>focus or the deposition will focus.</b></p> <p>5 <b>I've referred to this as the</b></p> <p>6 <b>docketing clerk notice.</b></p> <p>7 <b>Do you see where I'm referring</b></p> <p>8 <b>to, the Exhibit A?</b></p> <p>9 A. I do.</p> <p>10 <b>Q. And are you -- well, before we do</b></p> <p>11 <b>that, are you appearing today as</b></p> <p>12 <b>Greenberg's designated corporate</b></p> <p>13 <b>representative to testify with respect to</b></p> <p>14 <b>the items listed in Exhibit A?</b></p> <p>15 A. I'm prepared to give testimony</p> <p>16 today with respect to items 1, 3, 4, 5, 6,</p> <p>17 7 and 8 under Exhibit A of Sutton Exhibit</p> <p>18 1.</p> <p>19 <b>Q. So it looks like you're the</b></p> <p>20 <b>designated corporate rep then for all of</b></p> <p>21 <b>the items listed other than item number 2?</b></p> <p>22 A. I'm prepared to give testimony on</p> <p>23 those items that I've indicated. I did not</p> <p>24 indicate item number 2.</p> <p>25 <b>Q. Why is that?</b></p>	<p style="text-align: right;">Page 20</p> <p>1 <b>P. Sutton</b></p> <p>2 testimony on those categories. I spoke to</p> <p>3 people, I took notes, I reviewed documents,</p> <p>4 I took notes and have brought notes with me</p> <p>5 today to assist in getting you accurate</p> <p>6 dates and information.</p> <p>7 <b>Q. Okay.</b></p> <p>8 <b>You say that you sought to obtain</b></p> <p>9 <b>information and documents to review the</b></p> <p>10 <b>categories listed on Exhibit 1.</b></p> <p>11 <b>What information and documents</b></p> <p>12 <b>did you seek?</b></p> <p>13 A. Anything and everything having to</p> <p>14 do with Quickie and that related to what I</p> <p>15 understood those categories to be.</p> <p>16 <b>Q. How did you conduct that search?</b></p> <p>17 A. I personally went to people who</p> <p>18 are responsible for these various</p> <p>19 functions, interviewed them, requested that</p> <p>20 they provide in my office documents so that</p> <p>21 I could review them, and quite candidly, I</p> <p>22 confessed to having a particular interest</p> <p>23 in this matter, because at Thelen I headed</p> <p>24 up IP, I actually brought the intellectual</p> <p>25 property practice to Thelen from our</p>
<p style="text-align: right;">Page 19</p> <p>1 <b>P. Sutton</b></p> <p>2 A. I understand that I have not been</p> <p>3 designated to testify as with respect to</p> <p>4 item number 2 on Exhibit A of Sutton 1.</p> <p>5 <b>Q. Who is Greenberg's designated</b></p> <p>6 <b>representative with respect to item number</b></p> <p>7 <b>2, if you know?</b></p> <p>8 A. I'm not certain I know that at</p> <p>9 all. It's possible I've given testimony on</p> <p>10 the other categories that we'll wind up</p> <p>11 with information that will be helpful to</p> <p>12 you in item number 2.</p> <p>13 <b>Q. Okay.</b></p> <p>14 <b>What did you look at to prepare</b></p> <p>15 <b>to testify with respect to the items that</b></p> <p>16 <b>you've identified on Exhibit 1? What did</b></p> <p>17 <b>you do to prepare?</b></p> <p>18 A. I actually looked at all of the</p> <p>19 categories for which I have been designated</p> <p>20 to testify when first receiving the</p> <p>21 notices, and I, in addition to these 8</p> <p>22 items on Exhibit A, there is another notice</p> <p>23 with five categories.</p> <p>24 I sought to obtain information</p> <p>25 and documents to review so that I can give</p>	<p style="text-align: right;">Page 21</p> <p>1 <b>P. Sutton</b></p> <p>2 boutique, and I actually set up at Thelen</p> <p>3 their computerized docketing system that is</p> <p>4 the subject of this litigation.</p> <p>5 <b>Q. You set up Thelen's docketing</b></p> <p>6 <b>system.</b></p> <p>7 <b>Did you set up Greenberg's as</b></p> <p>8 <b>well?</b></p> <p>9 A. Yes, I did -- not alone, with</p> <p>10 assistance from others. I did bring to</p> <p>11 Greenberg a computerized docketing system</p> <p>12 and established that at Greenberg as well.</p> <p>13 <b>Q. Okay.</b></p> <p>14 <b>We'll get to that later.</b></p> <p>15 <b>But I want to turn back to what</b></p> <p>16 <b>you -- your search for documents and your</b></p> <p>17 <b>interviews.</b></p> <p>18 <b>Who did you interview?</b></p> <p>19 A. Several paralegals and clerks and</p> <p>20 asked the assistance of people who we call</p> <p>21 assistants and/or secretaries.</p> <p>22 <b>Q. Can you give me a list of names</b></p> <p>23 <b>that you spoke with, names of the people</b></p> <p>24 <b>you spoke with?</b></p> <p>25 A. Well, I don't believe I can give</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 22</p> <p>1 P. Sutton</p> <p>2 you a complete list. Some of them I know</p> <p>3 by sight but not by name. Phyllis Cordes,</p> <p>4 C-O-R-D-E-S. Marilyn Dawkins,</p> <p>5 D-A-W-K-I-N-S. Shoba Jaglal, J-A-G-L-A-L.</p> <p>6 Then there's a hyphenated name</p> <p>7 after that I don't recall. There are</p> <p>8 clerks responsible for -- oh, I may have</p> <p>9 spoken to Courtney T-R-E-U-B-E-R-T. Those</p> <p>10 are names that come to mind right now and</p> <p>11 various clerks whose names I don't know but</p> <p>12 who I interact with by sight or I simply go</p> <p>13 to their offices.</p> <p>14 <b>Q. Did someone ask you to conduct</b></p> <p>15 <b>those interviews, or did you do it on your</b></p> <p>16 <b>own?</b></p> <p>17 A. I undertook that as my</p> <p>18 responsibility if I was to be designated as</p> <p>19 a Rule 30(b)(6) witness.</p> <p>20 <b>Q. What does Phyllis Cordes, what is</b></p> <p>21 <b>her role at Greenberg Traurig?</b></p> <p>22 A. She's a paralegal.</p> <p>23 <b>Q. And why did you speak with her in</b></p> <p>24 <b>connection with today's deposition?</b></p> <p>25 A. To confirm my understanding of</p>	<p style="text-align: right;">Page 24</p> <p>1 P. Sutton</p> <p>2 paralegal.</p> <p>3 <b>Q. And why did you speak with her in</b></p> <p>4 <b>preparation for today?</b></p> <p>5 A. To see if she had any documents</p> <p>6 or information that might be responsive to</p> <p>7 the categories that I expected to give</p> <p>8 testimony on.</p> <p>9 <b>Q. Same questions for Courtney</b></p> <p>10 <b>Traubert.</b></p> <p>11 <b>What's her role?</b></p> <p>12 A. Courtney is a paralegal who in</p> <p>13 litigation matters or interparty matters</p> <p>14 assists in gathering documents and</p> <p>15 information in the ordinary course of her</p> <p>16 work activities.</p> <p>17 <b>Q. Of the people you listed,</b></p> <p>18 <b>Phyllis, Marilyn, Shoba and Courtney, did</b></p> <p>19 <b>any of them work on matters for Quickie,</b></p> <p>20 <b>LLC?</b></p> <p>21 A. I'm not sure.</p> <p>22 <b>Q. Was that not part of your</b></p> <p>23 <b>interview with any of those people?</b></p> <p>24 A. I just do not recall.</p> <p>25 <b>Q. Did you keep notes of your</b></p>
<p style="text-align: right;">Page 23</p> <p>1 P. Sutton</p> <p>2 procedures that were set up at Greenberg</p> <p>3 Traurig for the handling of intellectual</p> <p>4 property docketing matters.</p> <p>5 <b>Q. What is Marilyn Dawkins' title at</b></p> <p>6 <b>Greenberg Traurig?</b></p> <p>7 A. She's my assistant.</p> <p>8 <b>Q. And why did you speak with her in</b></p> <p>9 <b>connection with your preparation for today?</b></p> <p>10 A. Marilyn assists me with respect</p> <p>11 to many things, including the gathering of</p> <p>12 documents and oversight of tasks that I'm</p> <p>13 involved in.</p> <p>14 <b>Q. Is she your secretary?</b></p> <p>15 A. She is. We changed the name from</p> <p>16 secretary a couple of years ago.</p> <p>17 <b>Q. Understood.</b></p> <p>18 A. Out of respect for the fact that</p> <p>19 they do more than just secretarial</p> <p>20 functions.</p> <p>21 <b>Q. I'm going to slaughter her name,</b></p> <p>22 <b>but Shoba Jaglal?</b></p> <p>23 A. Jaglal.</p> <p>24 <b>Q. What is her role?</b></p> <p>25 A. She's an intellectual property</p>	<p style="text-align: right;">Page 25</p> <p>1 P. Sutton</p> <p>2 <b>interviews with those people?</b></p> <p>3 A. I did and I typed them up myself.</p> <p>4 I took personal notes and typed them up</p> <p>5 myself, and I brought a copy of those notes</p> <p>6 with me today.</p> <p>7 <b>Q. Can I see a copy of those notes?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. We can get a paralegal to make</b></p> <p>10 <b>copies of them here.</b></p> <p>11 A. There are two sheets.</p> <p>12 <b>Q. Is that your only copy?</b></p> <p>13 A. It is.</p> <p>14 <b>Q. Okay. Why don't we just set it</b></p> <p>15 <b>aside and we'll make copies during our</b></p> <p>16 <b>break and then we can talk about it.</b></p> <p>17 A. Thank you.</p> <p>18 <b>Q. You also said earlier that you</b></p> <p>19 <b>requested these folks to provide you</b></p> <p>20 <b>documents.</b></p> <p>21 <b>Did they, in fact, provide you</b></p> <p>22 <b>documents?</b></p> <p>23 A. They did.</p> <p>24 <b>Q. What documents did you obtain?</b></p> <p>25 A. I can't identify all of them for</p>

8 (Pages 26 to 29)

<p style="text-align: right;">Page 26</p> <p>1 P. Sutton</p> <p>2 you, but one of the sheets of the notes</p> <p>3 that I handed to you just now contains</p> <p>4 information obtained from those documents.</p> <p>5 So I think if I have that sheet. I could</p> <p>6 probably give you --</p> <p>7 MR. SCOTT: Why don't we just</p> <p>8 break.</p> <p>9 MR. LODEN: Yes, let's take a</p> <p>10 5-minute break.</p> <p>11 (Recess taken from 10:08 a.m. to</p> <p>12 10:10 a.m.)</p> <p>13 MR. LODEN: Why don't we go ahead</p> <p>14 and mark that as Exhibit 2.</p> <p>15 (Exhibit 2, Document, marked for</p> <p>16 identification, as of this date.)</p> <p>17 BY MR. LODEN:</p> <p>18 <b>Q. Mr. Sutton, before the break you</b></p> <p>19 <b>said that if you could refer to your notes</b></p> <p>20 <b>so you could better answer my question of</b></p> <p>21 <b>what documents you obtained during these</b></p> <p>22 <b>interviews we've been talking about.</b></p> <p>23 <b>I've now given you a copy of your</b></p> <p>24 <b>notes which has been marked as Exhibit 2 to</b></p> <p>25 <b>your deposition. Take a look and then see</b></p>	<p style="text-align: right;">Page 28</p> <p>1 P. Sutton</p> <p>2 Reminders for the timely filing</p> <p>3 of continuation or continuing type</p> <p>4 applications, whether they be continuations</p> <p>5 or continuations in part.</p> <p>6 I reviewed documents and</p> <p>7 representative examples of our GT -- I'm</p> <p>8 going to use GT for Greenberg Traurig if I</p> <p>9 can -- GT's marking of our system database</p> <p>10 with the status of cases that have been</p> <p>11 moved from our firm to another firm where</p> <p>12 the status is marked with either the term</p> <p>13 transferred and/or the term inactive so</p> <p>14 that reports thereafter do not include</p> <p>15 those and they thereafter do not show up on</p> <p>16 future monthly, weekly or daily reports.</p> <p>17 I reviewed examples of patent</p> <p>18 record sheets and status docket reports if</p> <p>19 files are sent from our firm to another</p> <p>20 firm, and I also confirmed that the latest</p> <p>21 or last status information in our system is</p> <p>22 not deleted from GT's system so that we can</p> <p>23 confirm at a later date, which I have, the</p> <p>24 fact that our system was marked with the</p> <p>25 terms transferred and/or inactive for</p>
<p style="text-align: right;">Page 27</p> <p>1 P. Sutton</p> <p>2 <b>if you can answer my question about what</b></p> <p>3 <b>documents you obtained.</b></p> <p>4 A. I reviewed many documents in</p> <p>5 connection with preparation for giving</p> <p>6 testimony under Rule 30(b)(6). They</p> <p>7 included representative copies of monthly</p> <p>8 docket reports, weekly docket reports,</p> <p>9 daily docket reports, status docket</p> <p>10 reports, patent record sheets, reminders</p> <p>11 for U.S. maintenance fees, reminders for</p> <p>12 foreign taxes and annuities, reminders for</p> <p>13 responses to official actions from the</p> <p>14 Patent and Trademark Office, reminders for</p> <p>15 the filing of cases in foreign countries</p> <p>16 either nationally or under the patent</p> <p>17 cooperation treaty, reminders for the</p> <p>18 filing of assignments, reminders for</p> <p>19 obtaining declarations, reminders relating</p> <p>20 to publications, reminders for issues,</p> <p>21 issue fees due, reminders associated with</p> <p>22 the filing of IDSs, or information</p> <p>23 disclosure statements, reminders for</p> <p>24 confirming the firm's, our law firm's</p> <p>25 obtaining filing receipts.</p>	<p style="text-align: right;">Page 29</p> <p>1 P. Sutton</p> <p>2 matters such as the transfer of the '160</p> <p>3 Patent files to the Thelen firm.</p> <p>4 I confirmed that the information</p> <p>5 is not deleted so that this same</p> <p>6 information is available as it is today and</p> <p>7 can be accessed to answer questions that</p> <p>8 may later arise.</p> <p>9 <b>Q. Okay.</b></p> <p>10 A. In addition -- I mean, I obtained</p> <p>11 a lot. I reviewed an April 11, 2002 piece</p> <p>12 of correspondence from Todd Sharinn to Mark</p> <p>13 Evens of the Thelen firm confirming that</p> <p>14 back in April 2002, Mark, who I know</p> <p>15 because he worked in my department at</p> <p>16 Thelen, actually received all of the '160</p> <p>17 Patent information and had an opportunity</p> <p>18 at that point back in April of 2002 to</p> <p>19 enter that into the system that I set up at</p> <p>20 Thelen.</p> <p>21 <b>Q. Let me stop you there.</b></p> <p>22 <b>Do you have a copy of that April</b></p> <p>23 <b>correspondence? Did you bring one today?</b></p> <p>24 A. If I don't have it, I'm sure -- I</p> <p>25 may not have brought it with me, but I'm</p>

9 (Pages 30 to 33)

<p style="text-align: right;">Page 30</p> <p>1 P. Sutton</p> <p>2 sure we can get that for you.</p> <p>3 <b>Q. Was it included in Greenberg's</b></p> <p>4 <b>document production?</b></p> <p>5 A. Hold on a second now. There may</p> <p>6 be a copy attached to the mediation</p> <p>7 statement, but I'm not certain. It's a</p> <p>8 one-page short letter.</p> <p>9 <b>Q. The reason I'm asking is I'm not</b></p> <p>10 <b>familiar with a piece of correspondence</b></p> <p>11 <b>with that date on it as you've described</b></p> <p>12 <b>it.</b></p> <p>13 <b>Do you know if it was included in</b></p> <p>14 <b>Greenberg's document production?</b></p> <p>15 A. I don't know. I have no</p> <p>16 information to tell me one way or another.</p> <p>17 MR. LODEN: Justin, it looks like</p> <p>18 you want to say something?</p> <p>19 MR. CHU: Can we go off the</p> <p>20 record?</p> <p>21 MR. LODEN: Sure.</p> <p>22 (Whereupon, an off-the-record</p> <p>23 discussion was held.)</p> <p>24 A. I reviewed a copy of the March 4,</p> <p>25 2003 revocation of GT's Power of Attorney.</p>	<p style="text-align: right;">Page 32</p> <p>1 P. Sutton</p> <p>2 Covan, Dr. Covan, including being</p> <p>3 responsible for what we did and the fees</p> <p>4 charged and obtained.</p> <p>5 <b>Q. What other documents?</b></p> <p>6 A. I'm indicating those documents.</p> <p>7 <b>Q. Okay.</b></p> <p>8 A. I reviewed the Patent and</p> <p>9 Trademark Office re-examination of the '160</p> <p>10 Patent that gutted that patent, leaving but</p> <p>11 two of the 34 original claims and</p> <p>12 indicating that the patent as originally</p> <p>13 granted should not have been granted.</p> <p>14 I reviewed correspondence between</p> <p>15 myself and, I believe his name was Hal</p> <p>16 Patton, P-A-T-T-O-N, I believe, of</p> <p>17 Medtronic, referencing negotiations that I</p> <p>18 had on behalf of Quickie with Medtronic in</p> <p>19 early attempts to settle the dispute, the</p> <p>20 patent infringement dispute between Quickie</p> <p>21 and Medtronic and reflecting a telephone</p> <p>22 conversations that I had with Hal Patton in</p> <p>23 that regard.</p> <p>24 <b>Q. Okay.</b></p> <p>25 A. I reviewed some documents, I</p>
<p style="text-align: right;">Page 31</p> <p>1 P. Sutton</p> <p>2 I reviewed a copy of the May 15, 2003 Todd</p> <p>3 Sharinn letter to Alan Fell indicating that</p> <p>4 he or our firm will take no further action,</p> <p>5 and enclosing a notice of revocation from</p> <p>6 the Patent and Trademark Office.</p> <p>7 I reviewed an October 10, 2006</p> <p>8 Aubrey Galloway statement under oath to the</p> <p>9 Patent and Trademark Office indicating that</p> <p>10 Thelen retained, was retained to transact</p> <p>11 all post-issuance proceedings and</p> <p>12 responsibilities at the Patent and</p> <p>13 Trademark Office, including the timely</p> <p>14 payment of maintenance fees.</p> <p>15 I reviewed a December 1, 2006</p> <p>16 Maier &amp; Maier supplement to their petition,</p> <p>17 indicating that Thelen was given the sole</p> <p>18 and full Power of Attorney with respect to</p> <p>19 the '160 Patent from the period March 4,</p> <p>20 2003 through August 14, 2006.</p> <p>21 <b>Q. Okay.</b></p> <p>22 A. I reviewed correspondence with</p> <p>23 Alan Fell, who actually supervised and</p> <p>24 oversaw all of our activities at Greenberg</p> <p>25 Traurig in representing Quickie and Steve</p>	<p style="text-align: right;">Page 33</p> <p>1 P. Sutton</p> <p>2 can't remember -- bear with me now.</p> <p>3 I looked for evidence of</p> <p>4 documents that would indicate that Quickie</p> <p>5 had licensed the '160 Patent to any parties</p> <p>6 other than Medtronic and confirmed that</p> <p>7 there were no other licenses.</p> <p>8 <b>Q. Let me stop you there. We may</b></p> <p>9 <b>have gone beyond the scope of my original</b></p> <p>10 <b>question.</b></p> <p>11 <b>My question is: What documents</b></p> <p>12 <b>did you obtain during your interviews of</b></p> <p>13 <b>the four individuals that you listed</b></p> <p>14 <b>earlier? It sounds like you may be going</b></p> <p>15 <b>beyond that now.</b></p> <p>16 A. Actually, okay. I'm including</p> <p>17 what I looked for as well as what I found.</p> <p>18 You want to know what I looked for as well?</p> <p>19 <b>Q. Understood. No.</b></p> <p>20 <b>I'm just wondering, we've talked</b></p> <p>21 <b>about your interviews of the four</b></p> <p>22 <b>individuals you listed previously, and you</b></p> <p>23 <b>also said you obtained documents from those</b></p> <p>24 <b>folks.</b></p> <p>25 A. Yes.</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 34</p> <p>1 P. Sutton</p> <p>2 <b>Q. So my question was, I think, more</b></p> <p>3 <b>limited than the one that you're answering</b></p> <p>4 <b>now.</b></p> <p>5 <b>My question was only what</b></p> <p>6 <b>documents did you obtain from the four</b></p> <p>7 <b>people that you interviewed?</b></p> <p>8 A. Okay. Let me continue in that</p> <p>9 regard then. So we have the PTO documents.</p> <p>10 I reviewed the petition to revive, that</p> <p>11 attempted to revive the '160 Patent.</p> <p>12 <b>Q. Who provided that document to</b></p> <p>13 <b>you?</b></p> <p>14 A. One or more of those people</p> <p>15 provided me with the physical copy of that</p> <p>16 document.</p> <p>17 <b>Q. Do you remember who?</b></p> <p>18 A. I don't know who physically</p> <p>19 handed it to me, but it was one of those</p> <p>20 people would have handed that to me.</p> <p>21 <b>Q. Has Greenberg set up a --</b></p> <p>22 A. I'm not finished, but if you</p> <p>23 want --</p> <p>24 <b>Q. Yeah, I would like to go to</b></p> <p>25 <b>another question now actually.</b></p>	<p style="text-align: right;">Page 36</p> <p>1 P. Sutton</p> <p>2 and outside counsel.</p> <p>3 <b>Q. Well, do you understand that in</b></p> <p>4 <b>the context of this Quickie versus</b></p> <p>5 <b>Greenberg Traurig litigation that Quickie</b></p> <p>6 <b>produced documents and provided those</b></p> <p>7 <b>documents to your outside counsel at</b></p> <p>8 <b>Pollack &amp; Kaminsky, do you have that</b></p> <p>9 <b>understanding?</b></p> <p>10 A. That is my understanding.</p> <p>11 <b>Q. And now it seems like you're</b></p> <p>12 <b>saying that to obtain copies of those</b></p> <p>13 <b>documents you spoke with a paralegal or</b></p> <p>14 <b>perhaps your secretary -- or excuse me,</b></p> <p>15 <b>assistant, at Greenberg Traurig to obtain</b></p> <p>16 <b>copies of those documents.</b></p> <p>17 <b>Is that what you were saying?</b></p> <p>18 A. Copies of documents involving the</p> <p>19 litigation that is the subject of this</p> <p>20 deposition between Quickie and Greenberg</p> <p>21 Traurig, I personally keep those copies</p> <p>22 with the assistance of my assistant Marilyn</p> <p>23 Dawkins.</p> <p>24 <b>Q. So after Quickie produced a set</b></p> <p>25 <b>of documents to your outside counsel, your</b></p>
<p style="text-align: right;">Page 35</p> <p>1 P. Sutton</p> <p>2 A. Okay, sure.</p> <p>3 <b>Q. Has Greenberg assigned a</b></p> <p>4 <b>paralegal to maintain this file, this file</b></p> <p>5 <b>being the litigation that we're now</b></p> <p>6 <b>currently in?</b></p> <p>7 MR. CHU: Well, I'm not sure what</p> <p>8 you mean, the litigation file.</p> <p>9 MR. LODEN: It's a poor question.</p> <p>10 Let me ask it again.</p> <p>11 BY MR. LODEN:</p> <p>12 <b>Q. Has Greenberg assigned a</b></p> <p>13 <b>paralegal to work on the litigation which</b></p> <p>14 <b>is Quickie, LLC versus Greenberg Traurig?</b></p> <p>15 A. I have not assigned a paralegal</p> <p>16 to do so. We have outside counsel and we</p> <p>17 have counsel for our firm who may or may</p> <p>18 not have assigned a paralegal in that</p> <p>19 regard.</p> <p>20 <b>Q. Well --</b></p> <p>21 A. We no longer represent Quickie,</p> <p>22 so --</p> <p>23 <b>Q. Understood.</b></p> <p>24 A. -- so as concerns the litigation,</p> <p>25 we rely on office of counsel with the firm</p>	<p style="text-align: right;">Page 37</p> <p>1 P. Sutton</p> <p>2 <b>outside counsel provided a copy of those</b></p> <p>3 <b>documents to you, which you then keep in</b></p> <p>4 <b>your office, is that what you said?</b></p> <p>5 A. I did not testify to that, no.</p> <p>6 <b>Q. Well, then, how did I get that</b></p> <p>7 <b>wrong?</b></p> <p>8 A. Certain documents that may have</p> <p>9 been produced in this litigation by either</p> <p>10 party or any party I have copies of. I</p> <p>11 don't know that I have copies of all such</p> <p>12 documents.</p> <p>13 <b>Q. Turning back to the first page of</b></p> <p>14 <b>Exhibit 2 --</b></p> <p>15 A. You don't want me to continue?</p> <p>16 <b>Q. No, I'm fine.</b></p> <p>17 A. Okay.</p> <p>18 <b>Q. Turning back to the first page of</b></p> <p>19 <b>Exhibit 2, you mentioned that you looked</b></p> <p>20 <b>for representative examples of cases where</b></p> <p>21 <b>the status was changed to transferred or</b></p> <p>22 <b>inactive.</b></p> <p>23 <b>Do you recall that testimony?</b></p> <p>24 A. That's correct.</p> <p>25 <b>Q. Why did you want to look at</b></p>



11 (Pages 38 to 41)

<p style="text-align: right;">Page 38</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>representative examples of that status</b></p> <p>3 <b>change?</b></p> <p>4 A. I did that to confirm the fact</p> <p>5 that GT's records were marked when its</p> <p>6 Power of Attorney with regard to matters</p> <p>7 affecting the '160 Patent were revoked. I</p> <p>8 wanted to confirm that those records had at</p> <p>9 that time been marked as transferred to the</p> <p>10 Thelen firm.</p> <p>11 <b>Q. Well, I'm not talking about the</b></p> <p>12 <b>specific docket entries for the Quickie</b></p> <p>13 <b>'160 Patent.</b></p> <p>14 <b>You said that you looked at</b></p> <p>15 <b>docket entries for completely different</b></p> <p>16 <b>patents.</b></p> <p>17 A. I looked at samples of others as</p> <p>18 well, yes.</p> <p>19 <b>Q. What samples did you look at?</b></p> <p>20 A. The one I recall right now,</p> <p>21 because it's so relevant, is the one</p> <p>22 involving the '160 Patent, but I have seen</p> <p>23 others as well as examples of records</p> <p>24 having been marked as our powers having</p> <p>25 been revoked and the case being transferred</p>	<p style="text-align: right;">Page 40</p> <p>1 P. Sutton</p> <p>2 <b>Q. What is a monthly docket report?</b></p> <p>3 A. It's a report that includes due</p> <p>4 dates that occur or reminders that occur</p> <p>5 within the monthly period that follows the</p> <p>6 date of that report, deadlines or due dates</p> <p>7 that require action or attention during the</p> <p>8 period of one month after the generation of</p> <p>9 that report.</p> <p>10 <b>Q. Who generates those monthly</b></p> <p>11 <b>docket reports at Greenberg Traurig?</b></p> <p>12 A. Those reports --</p> <p>13 <b>Q. Let me be even more specific, I</b></p> <p>14 <b>apologize.</b></p> <p>15 <b>In 2003, who generated those</b></p> <p>16 <b>monthly docket reports at Greenberg</b></p> <p>17 <b>Traurig?</b></p> <p>18 A. One or more paralegals have the</p> <p>19 ability and do generate such reports.</p> <p>20 <b>Q. So the generation of one of those</b></p> <p>21 <b>reports, a monthly docket report, is a</b></p> <p>22 <b>function that a paralegal does once a month</b></p> <p>23 <b>then?</b></p> <p>24 A. Our paralegals generate monthly</p> <p>25 docket reports more frequently than once a</p>
<p style="text-align: right;">Page 39</p> <p>1 P. Sutton</p> <p>2 to another firm who thereby assumed</p> <p>3 responsibility.</p> <p>4 <b>Q. So, again, my question then is</b></p> <p>5 <b>why did you believe that reviewing those</b></p> <p>6 <b>unrelated patent docket entries was</b></p> <p>7 <b>relevant to your testimony today?</b></p> <p>8 A. It would indicate that by the</p> <p>9 records being marked as transferred or</p> <p>10 inactive, that there would be no subsequent</p> <p>11 reports that included those cases because</p> <p>12 those matters were thereafter being handled</p> <p>13 by the firm to whom the cases have been</p> <p>14 transferred.</p> <p>15 <b>Q. And did your review of those</b></p> <p>16 <b>other patent docket entries confirm that</b></p> <p>17 <b>understanding?</b></p> <p>18 A. It did.</p> <p>19 <b>Q. Did you keep a list of the other</b></p> <p>20 <b>docket entries that you looked at?</b></p> <p>21 A. I reviewed several. I did not</p> <p>22 make a list of any except the one involving</p> <p>23 the '160 Patent. I thought that that would</p> <p>24 be the area that you'd want to question me</p> <p>25 on.</p>	<p style="text-align: right;">Page 41</p> <p>1 P. Sutton</p> <p>2 month within our various offices.</p> <p>3 <b>Q. Is there one paralegal who</b></p> <p>4 <b>generates reports for all patents for which</b></p> <p>5 <b>Greenberg is responsible, or how is it</b></p> <p>6 <b>decided who generates the reports for each</b></p> <p>7 <b>patent?</b></p> <p>8 A. We have, our firm has dozens of</p> <p>9 offices, many of which include intellectual</p> <p>10 property attorneys who do patent</p> <p>11 prosecution as you and I would understand</p> <p>12 that term, which is quite apart from</p> <p>13 litigation docket reports and paralegals,</p> <p>14 one or more paralegals in those various</p> <p>15 offices that have working attorneys who</p> <p>16 work on cases who are responsible for</p> <p>17 client matters in those various offices</p> <p>18 generate reports from our computerized</p> <p>19 system and provide those to the working</p> <p>20 attorneys who are responsible for</p> <p>21 responding or whose attention must be drawn</p> <p>22 to those entries on the docket reports, but</p> <p>23 they occur more than once a month. They</p> <p>24 may occur more than once a month and</p> <p>25 provide a period of one month which may not</p>

12 (Pages 42 to 45)

<p style="text-align: right;">Page 42</p> <p>1 P. Sutton</p> <p>2 coincide with a calendar period.</p> <p>3 <b>Q. What then is the difference</b></p> <p>4 <b>between a monthly docket report and a</b></p> <p>5 <b>weekly docket report?</b></p> <p>6 A. The weekly docket report</p> <p>7 generates comparable information for the</p> <p>8 week following the generation of that</p> <p>9 report.</p> <p>10 <b>Q. You say comparable information.</b></p> <p>11 <b>Does it include more detail, less</b></p> <p>12 <b>detail, the same amount?</b></p> <p>13 A. It depends on who is generating</p> <p>14 the report and what they want in that</p> <p>15 report. There is a relational database</p> <p>16 from which the information can be obtained,</p> <p>17 but I have seen weekly docket reports with</p> <p>18 the same kind of information as appears on</p> <p>19 the monthly docket report, but for the</p> <p>20 shorter period of one week.</p> <p>21 <b>Q. I believe you said earlier that</b></p> <p>22 <b>you reviewed both monthly and weekly docket</b></p> <p>23 <b>reports in preparation for your testimony</b></p> <p>24 <b>today.</b></p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 44</p> <p>1 P. Sutton</p> <p>2 matters unrelated to the matters involved</p> <p>3 in this litigation, I would imagine that</p> <p>4 they are not included.</p> <p>5 <b>Q. Well, it sounds like just</b></p> <p>6 <b>previously you said that you were</b></p> <p>7 <b>interested to see those other docket</b></p> <p>8 <b>reports because it was relevant to your</b></p> <p>9 <b>testimony today.</b></p> <p>10 A. No, I wanted to see what kind of</p> <p>11 reports, the kind of reports that GT</p> <p>12 generates, I wanted to confirm that. I did</p> <p>13 not want to confirm the content of those</p> <p>14 reports that had matters unrelated and</p> <p>15 frankly are sensitive, confidential</p> <p>16 information of clients other than Greenberg</p> <p>17 Taurig clients that are not involved in</p> <p>18 this litigation.</p> <p>19 <b>Q. Did you review any docket reports</b></p> <p>20 <b>for the '160 Patent in preparation for</b></p> <p>21 <b>today?</b></p> <p>22 A. I did see one or more reports</p> <p>23 relating to the 160 patents.</p> <p>24 <b>Q. Describe to me those reports that</b></p> <p>25 <b>you saw relating to the '160 Patent.</b></p>
<p style="text-align: right;">Page 43</p> <p>1 P. Sutton</p> <p>2 <b>Q. For which patents did those</b></p> <p>3 <b>reports relate?</b></p> <p>4 A. The reports that I reviewed</p> <p>5 related to any number of different patents.</p> <p>6 I was interested in seeing the format of</p> <p>7 the report and the information that was</p> <p>8 contained on that report.</p> <p>9 <b>Q. Why was the format and the</b></p> <p>10 <b>information contained in the report, why</b></p> <p>11 <b>was that interesting to you?</b></p> <p>12 A. I wanted to confirm my</p> <p>13 understanding that the system as operating</p> <p>14 was as I understood it to be operating so</p> <p>15 that I could give you truthful testimony</p> <p>16 today.</p> <p>17 <b>Q. Do you know if any of the docket</b></p> <p>18 <b>reports that you've reviewed for your</b></p> <p>19 <b>testimony today are included in Greenberg</b></p> <p>20 <b>Taurig's document production in this</b></p> <p>21 <b>litigation?</b></p> <p>22 A. I have not seen the document</p> <p>23 production that Greenberg Taurig produced</p> <p>24 to you, so I'm not in the position to</p> <p>25 testify. To the extent that they included</p>	<p style="text-align: right;">Page 45</p> <p>1 <b>P. Sutton</b></p> <p>2 A. They're on 8.5-by-11 paper</p> <p>3 printed in landscape mode with identifying</p> <p>4 information that identifies the case,</p> <p>5 provides the docket number or matter</p> <p>6 number, provides due dates, and there are a</p> <p>7 number of headings, all of which I don't</p> <p>8 recall right now which permit you to</p> <p>9 identify the case and see what the due date</p> <p>10 is for that case and what action or</p> <p>11 attention is required.</p> <p>12 That's one type of report that I</p> <p>13 reviewed, for example.</p> <p>14 <b>Q. Do you know if the docket reports</b></p> <p>15 <b>that you reviewed were included in</b></p> <p>16 <b>Greenberg's document production in this</b></p> <p>17 <b>litigation?</b></p> <p>18 A. I have seen one docket report at</p> <p>19 least that I believe has been produced, but</p> <p>20 without seeing it -- if you show it to me,</p> <p>21 I probably will be able to.</p> <p>22 MR. LODEN: I'd ask the reporter</p> <p>23 to mark Exhibit 3.</p> <p>24 (Exhibit 3, Patent Record Sheet</p> <p>25 Form, marked for identification, as of</p>



13 (Pages 46 to 49)

<p style="text-align: right;">Page 46</p> <p>1 P. Sutton</p> <p>2 this date.)</p> <p>3 BY MR. LODEN:</p> <p>4 Q. Mr. Sutton, I've just handed you</p> <p>5 what's been marked as Exhibit 3, which is a</p> <p>6 one-page document bearing the Bates label</p> <p>7 GT-0001019.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Is this one of the docket reports</p> <p>11 that you were referring to in your earlier</p> <p>12 testimony?</p> <p>13 A. This is an example of one of the</p> <p>14 documents I reviewed in preparation for</p> <p>15 giving testimony and reflects an entry of</p> <p>16 the type that I referred to earlier where</p> <p>17 it says this application has been</p> <p>18 transferred to another firm.</p> <p>19 Q. Well, I appreciate that, but I</p> <p>20 think I was asking a different question.</p> <p>21 A. I'm sorry, what were you asking?</p> <p>22 Q. My question is: Is this one of</p> <p>23 the docket reports that you were referring</p> <p>24 to in your earlier testimony?</p> <p>25 A. This is one of the reports that I</p>	<p style="text-align: right;">Page 48</p> <p>1 P. Sutton</p> <p>2 you look back at Exhibit 2, you've got</p> <p>3 patent record sheet there on the top of the</p> <p>4 first page and then right above that you</p> <p>5 reference monthly, weekly and daily docket</p> <p>6 reports.</p> <p>7 So which one is this? Is this a</p> <p>8 docket report or is this a record sheet in</p> <p>9 Exhibit 3?</p> <p>10 A. If you take a look under the</p> <p>11 heading under which all of those entries on</p> <p>12 Sutton 2, you'll see that the heading for</p> <p>13 all of those items, the five items</p> <p>14 underneath it, including the patent record</p> <p>15 sheet, are reports for working attorneys</p> <p>16 under assistance so that Exhibit 3 is an</p> <p>17 example of a report.</p> <p>18 Q. But Exhibit 3 you said is a</p> <p>19 patent record sheet, correct?</p> <p>20 A. Exhibit 3 is a patent record</p> <p>21 sheet form of report for working attorneys</p> <p>22 and their assistants.</p> <p>23 Q. I understand that, but my</p> <p>24 question is: You said previously that you</p> <p>25 reviewed monthly docket reports for the</p>
<p style="text-align: right;">Page 47</p> <p>1 P. Sutton</p> <p>2 was referring to in my earlier testimony.</p> <p>3 Q. The reason I ask is you say that</p> <p>4 the reports you reviewed were printed in</p> <p>5 landscape mode --</p> <p>6 A. Some of them were printed in</p> <p>7 landscape mode, one or more were printed in</p> <p>8 portrait mode. It depends on the report.</p> <p>9 I was giving you an example.</p> <p>10 Q. So this is one of the reports,</p> <p>11 but you reviewed others, is that a fair --</p> <p>12 A. I reviewed this report, Exhibit</p> <p>13 3, as well as others.</p> <p>14 Q. And what type of report is this</p> <p>15 in Exhibit 3?</p> <p>16 A. This, I believe, is referred to</p> <p>17 as a patent record sheet of the type I</p> <p>18 previously testified to.</p> <p>19 Q. Well, you mentioned patent record</p> <p>20 sheet previously, but we haven't talked</p> <p>21 about that yet.</p> <p>22 A. I have been talking about that as</p> <p>23 an example. When I indicate reports, a</p> <p>24 patent record sheets a type of a report.</p> <p>25 Q. Right, I understand that, but if</p>	<p style="text-align: right;">Page 49</p> <p>1 P. Sutton</p> <p>2 '160 Patent and it sounds like Exhibit 3 is</p> <p>3 not a monthly docket report.</p> <p>4 MR. CHU: He didn't say that.</p> <p>5 A. I think you're either not</p> <p>6 understanding my testimony or you're taking</p> <p>7 issue with me.</p> <p>8 Exhibit 3 is a type of report</p> <p>9 provided to working attorneys and their</p> <p>10 assistants and is sometimes referred to as</p> <p>11 a patent record sheet. We give these and</p> <p>12 refer to them by different names so that we</p> <p>13 can distinguish their format.</p> <p>14 Q. Let me go back then.</p> <p>15 Did you review any monthly docket</p> <p>16 reports concerning the '160 Patent?</p> <p>17 A. I don't believe I could, no,</p> <p>18 because the record was marked as having</p> <p>19 been transferred to another firm. I wanted</p> <p>20 a report to be generated that reflected the</p> <p>21 '160 Patent. It wouldn't come out on there</p> <p>22 because it was transferred to another firm</p> <p>23 that assumed full responsibility and our</p> <p>24 reports no longer contained the '160 Patent</p> <p>25 once the entry has been made that it's been</p>

14 (Pages 50 to 53)

<p style="text-align: right;">Page 50</p> <p>1 P. Sutton 2 transferred to another firm. 3 <b>Q. For a patent that has not been</b> 4 <b>transferred, when the monthly docket report</b> 5 <b>is prepared, you say that it's --</b> 6 A. If I could, before you ask the 7 question, I just want to, I understand Mr. 8 Kaminsky is leaving, I just want to pay my 9 respects and say goodbye. 10 <b>Q. Sure.</b> 11 <b>(Whereupon, an off-the-record</b> 12 <b>discussion was held.)</b> 13 <b>BY MR. LODEN:</b> 14 <b>Q. Before the break, Mr. Sutton, I</b> 15 <b>was about to -- well, we were talking about</b> 16 <b>monthly docket reports.</b> 17 A. Yes. 18 <b>Q. And I had asked you if you had</b> 19 <b>reviewed any monthly docket reports for the</b> 20 <b>'160 Patent, and you said no, they weren't</b> 21 <b>available.</b> 22 <b>Do you recall that?</b> 23 A. I don't believe that that's what 24 my response was. 25 <b>Q. Then I'm sorry, what was your</b></p>	<p style="text-align: right;">Page 52</p> <p>1 P. Sutton 2 <b>BY MR. LODEN:</b> 3 <b>Q. It's a simple yes or no question.</b> 4 A. I don't believe a simple yes or 5 no answer is appropriate, and I've already 6 indicated within my last response to you 7 the negative response and the reason for 8 it. 9 <b>Q. So the answer is no, you did not</b> 10 <b>review any monthly docket reports for the</b> 11 <b>'160 Patent, right?</b> 12 A. My answer is the answer I gave to 13 you already to the same question. 14 <b>Q. When a monthly docket report is</b> 15 <b>printed out, what happens to it?</b> 16 A. In the ordinary course of 17 business at our firm, monthly docket 18 reports are generated and copies thereof 19 are provided to working attorneys and their 20 assistants. 21 <b>Q. Were you a working attorney on</b> 22 <b>the '160 Patent?</b> 23 A. Not on the patent prosecution of 24 the '160 Patent, but I was associated with 25 interacting with Dr. Steve Covan on the</p>
<p style="text-align: right;">Page 51</p> <p>1 P. Sutton 2 <b>answer then to my question of whether you</b> 3 <b>reviewed any monthly docket reports for the</b> 4 <b>'160 Patent?</b> 5 MR. CHU: I think he's answered 6 that, but -- 7 <b>BY MR. LODEN:</b> 8 <b>Q. Go ahead and answer it again.</b> 9 THE WITNESS: Could you read back 10 my answer? 11 (Whereupon, the requested portion 12 was read back by the court reporter.) 13 A. That's correct, I was referring 14 to the entry on Exhibit 3. 15 <b>Q. Okay.</b> 16 MR. LODEN: I object to the 17 nonresponsive portion of that 18 response. 19 <b>Q. My question is -- it's a simple</b> 20 <b>yes or no question -- did you review any</b> 21 <b>monthly docket reports for the '160 Patent</b> 22 <b>prior to your deposition today.</b> 23 MR. CHU: I think he's answered 24 that, he's given you an explanation as 25 well.</p>	<p style="text-align: right;">Page 53</p> <p>1 P. Sutton 2 litigation involving Medtronic. 3 <b>Q. Who was the working attorney then</b> 4 <b>that would have received the monthly docket</b> 5 <b>reports for the '160 Patent?</b> 6 A. I think your question makes an 7 assumption that's not correct. 8 <b>Q. What's that assumption?</b> 9 A. I believe that there would be no 10 monthly docket report relating to the '160 11 Patent where our firm had been replaced in 12 all respects regarding the '160 Patent well 13 prior to that time. 14 Let me be more specific if you 15 wish me to -- 16 <b>Q. No, I think I understand your</b> 17 <b>answer. Let's look at Exhibit 3.</b> 18 A. Yes. 19 <b>Q. Which you said earlier was a</b> 20 <b>patent record sheet for the '160 Patent?</b> 21 A. My time indicated that people in 22 our firm refer to Exhibit 3 as the type of 23 report that is called a patent record 24 sheet. 25 <b>Q. Okay.</b></p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 54</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>If you look at the top line, you</b></p> <p>3 <b>see where it says entered and then there is</b></p> <p>4 <b>a date there, 8/9/2002?</b></p> <p>5 A. I see those numbers at the top of</p> <p>6 Exhibit 3.</p> <p>7 <b>Q. What does that entry reflect?</b></p> <p>8 A. Sitting here today, I don't know.</p> <p>9 <b>Q. Who would know?</b></p> <p>10 A. I don't know who would know</p> <p>11 because I haven't studied that. I don't</p> <p>12 know what entry those numbers relate to.</p> <p>13 If you want, I can spend a couple of</p> <p>14 minutes looking at it and see if I can give</p> <p>15 you a more full response if you wish me to.</p> <p>16 I note at the bottom request for</p> <p>17 ex parte re-examination is granted, and I</p> <p>18 don't know whether that number or date</p> <p>19 refers to that entry or some other entry.</p> <p>20 MR. LODEN: I'm going to ask the</p> <p>21 court reporter to mark Exhibit 4 to</p> <p>22 your deposition.</p> <p>23 (Exhibit 4, 30(b)(6) Deposition</p> <p>24 Notice, marked for identification, as</p> <p>25 of this date.)</p>	<p style="text-align: right;">Page 56</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>entered 8/9/2002 mean on Exhibit 3?</b></p> <p>3 A. I would need to look at other</p> <p>4 documents in order to respond to that.</p> <p>5 <b>Q. What other documents?</b></p> <p>6 A. May I see the request for ex</p> <p>7 parte re-examination and the date it was</p> <p>8 granted, because that date would assist me.</p> <p>9 I need to review documents other than</p> <p>10 Exhibit 3 in order to provide you with an</p> <p>11 answer.</p> <p>12 <b>Q. You stated earlier that you set</b></p> <p>13 <b>up the docket system at Greenberg Traurig,</b></p> <p>14 <b>correct?</b></p> <p>15 A. Correct.</p> <p>16 <b>Q. You and one other person, I</b></p> <p>17 <b>believe, is what your testimony was?</b></p> <p>18 A. That is not my testimony.</p> <p>19 <b>Q. But you, yourself, were</b></p> <p>20 <b>responsible for it?</b></p> <p>21 A. I, myself, participated in that.</p> <p>22 <b>Q. And the printout, the patent</b></p> <p>23 <b>record sheet that's reflected in Exhibit 3,</b></p> <p>24 <b>what software is this printed from, what is</b></p> <p>25 <b>the name of software program?</b></p>
<p style="text-align: right;">Page 55</p> <p>1 P. Sutton</p> <p>2 BY MR. LODEN:</p> <p>3 <b>Q. Mr. Sutton, the court reporter</b></p> <p>4 <b>has just handed you Exhibit 4 to your</b></p> <p>5 <b>deposition, which I will represent to you</b></p> <p>6 <b>is a 30(b)(6) Deposition Notice for the</b></p> <p>7 <b>deposition of Greenberg Traurig's corporate</b></p> <p>8 <b>representative with knowledge with respect</b></p> <p>9 <b>to the five items on Exhibit A to that</b></p> <p>10 <b>deposition notice. Exhibit A is the last</b></p> <p>11 <b>page.</b></p> <p>12 <b>Do you see where I'm at?</b></p> <p>13 A. I do.</p> <p>14 <b>Q. If you look at item number 2 on</b></p> <p>15 <b>Exhibit A, it states the collection entry</b></p> <p>16 <b>interpretation maintenance and handling of</b></p> <p>17 <b>the data reflected in document number</b></p> <p>18 <b>GT-0001019 -- do you see that?</b></p> <p>19 A. I do see those numbers in</p> <p>20 category number 2.</p> <p>21 <b>Q. Are you the Greenberg Traurig</b></p> <p>22 <b>corporate representative designated to</b></p> <p>23 <b>speak with respect to item number 2?</b></p> <p>24 A. I am.</p> <p>25 <b>Q. So I ask you again, what does</b></p>	<p style="text-align: right;">Page 57</p> <p>1 <b>P. Sutton</b></p> <p>2 A. I believe it's DIAMS.</p> <p>3 <b>Q. And in DIAMS on a field entered</b></p> <p>4 <b>what does that field refer to in the DIAMS</b></p> <p>5 <b>software program?</b></p> <p>6 A. I believe that that field relates</p> <p>7 to the date, one or more entries have been</p> <p>8 made in the database.</p> <p>9 <b>Q. Well, if you look just to the</b></p> <p>10 <b>right, you'll see modified, do you see</b></p> <p>11 <b>that?</b></p> <p>12 A. I see that word, yes.</p> <p>13 <b>Q. What does the modified field in</b></p> <p>14 <b>DIAMS software reflect?</b></p> <p>15 A. That reflects a date on which a</p> <p>16 modification has been made.</p> <p>17 <b>Q. Looking to the right of the</b></p> <p>18 <b>modified field, do you see where it says</b></p> <p>19 <b>attorneys?</b></p> <p>20 A. Yes, I see that.</p> <p>21 <b>Q. PJS, is that you?</b></p> <p>22 A. That would be me.</p> <p>23 <b>Q. TSS, is that Todd Sharinn?</b></p> <p>24 A. I believe so.</p> <p>25 <b>Q. And who is ADR?</b></p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 58</p> <p>1 <b>P. Sutton</b></p> <p>2 A. I believe that's an employee of</p> <p>3 our firm that -- oh, that would be Augusto</p> <p>4 D'Emilio Rogers.</p> <p>5 <b>Q. Is it Mr. Rogers?</b></p> <p>6 A. It's Ms. Rogers.</p> <p>7 <b>Q. What was her role?</b></p> <p>8 A. She's a paralegal within our</p> <p>9 intellectual property department at our</p> <p>10 firm.</p> <p>11 <b>Q. And is she still at Greenberg</b></p> <p>12 <b>Taurig?</b></p> <p>13 A. She is.</p> <p>14 <b>Q. If you look -- let me just point</b></p> <p>15 <b>you to where I'm at. There is a section</b></p> <p>16 <b>that says TFD, do you see that, on Exhibit</b></p> <p>17 <b>3?</b></p> <p>18 A. I see those letters, yes.</p> <p>19 <b>Q. What does TFD refer to?</b></p> <p>20 A. I'm having a memory lapse right</p> <p>21 this minute.</p> <p>22 <b>Q. Does it refer to transferred?</b></p> <p>23 A. If I think about it for a bit, if</p> <p>24 we come back to it or if I remember the</p> <p>25 answer to that, I'll be happy to provide it</p>	<p style="text-align: right;">Page 60</p> <p>1 P. Sutton</p> <p>2 been assumed by the new attorney and that</p> <p>3 it would be inappropriate for us to do</p> <p>4 anything further on this matter.</p> <p>5 MR. LODEN: Objection.</p> <p>6 Nonresponsive.</p> <p>7 A. I'm not sure I understand. What</p> <p>8 was not responsive?</p> <p>9 <b>Q. My question, Mr. Sutton, is does</b></p> <p>10 <b>TFD entry, does the TFD entry on Exhibit 3</b></p> <p>11 <b>refer to whether or not the patent was</b></p> <p>12 <b>transferred and the date upon which it was</b></p> <p>13 <b>transferred?</b></p> <p>14 A. I believe that that is the</p> <p>15 occasion as a result of the Power of</p> <p>16 Attorney being revoked.</p> <p>17 MR. LODEN: Objection.</p> <p>18 Nonresponsive to the nonresponsive</p> <p>19 portion of that answer.</p> <p>20 BY MR. LODEN:</p> <p>21 <b>Q. So my question is then, prior to</b></p> <p>22 <b>the patent being transferred on April 2,</b></p> <p>23 <b>2003, were monthly docket reports prepared?</b></p> <p>24 A. I think you misspoke. When you</p> <p>25 say the patent was transferred, our Power</p>
<p style="text-align: right;">Page 59</p> <p>1 P. Sutton</p> <p>2 to you in a little bit.</p> <p>3 <b>Q. Going back to my prior</b></p> <p>4 <b>question --</b></p> <p>5 A. If you could give me just a</p> <p>6 second, let me just look at the entire</p> <p>7 document because that may assist me.</p> <p>8 <b>Q. Sure.</b></p> <p>9 A. I believe there are two fields</p> <p>10 associated with TFD. I believe one</p> <p>11 indicates whether or not it's been</p> <p>12 transferred, and I believe that that Y</p> <p>13 indicates yes, it has transferred to</p> <p>14 another firm.</p> <p>15 The second field, which carries</p> <p>16 the date April 2, 2003, would be the date</p> <p>17 that my firm's Power of Attorney was</p> <p>18 revoked by the client, which is reflected</p> <p>19 under action on the left, towards the left,</p> <p>20 POA, Power of Attorney revoked, which</p> <p>21 you'll see is that very same date.</p> <p>22 <b>Q. Okay.</b></p> <p>23 A. So that that transfer indicates</p> <p>24 that our Power of Attorney was revoked and</p> <p>25 that all responsibility for this case has</p>	<p style="text-align: right;">Page 61</p> <p>1 P. Sutton</p> <p>2 of Attorney was revoked and a new Power of</p> <p>3 Attorney given to the Thelen firm.</p> <p>4 <b>Q. Okay.</b></p> <p>5 A. So it's not a matter of a</p> <p>6 transfer of patent.</p> <p>7 <b>Q. Understood.</b></p> <p>8 A. As much as our authority to act</p> <p>9 on behalf of the client in this regard was</p> <p>10 revoked.</p> <p>11 <b>Q. So prior to that transfer taking</b></p> <p>12 <b>place, were monthly docket reports prepared</b></p> <p>13 <b>for the '160 Patent?</b></p> <p>14 A. I'm not certain that they were,</p> <p>15 because I don't believe that they would be</p> <p>16 necessary.</p> <p>17 <b>Q. Why?</b></p> <p>18 A. I'm not sure I understand why you</p> <p>19 think they would be. I'm not understanding</p> <p>20 your question.</p> <p>21 <b>Q. My question is pretty simple.</b></p> <p>22 <b>Prior to the transfer on April 2,</b></p> <p>23 <b>2003 to the Thelen firm, Greenberg Taurig</b></p> <p>24 <b>was docketing and monitoring the deadlines</b></p> <p>25 <b>for maintenance fees on the '160 Patent,</b></p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 62</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>correct?</b></p> <p>3 A. Greenberg Traurig and others,</p> <p>4 correct.</p> <p>5 <b>Q. So in connection with Greenberg</b></p> <p>6 <b>Taurig's monitoring and docketing of the</b></p> <p>7 <b>maintenance fee deadlines, were monthly</b></p> <p>8 <b>docket reports prepared for the '160</b></p> <p>9 <b>Patent?</b></p> <p>10 A. Not after -- it's my</p> <p>11 understanding that they were not generated</p> <p>12 after Greenberg Traurig was notified that</p> <p>13 its Power of Attorney was going to be</p> <p>14 revoked and they would no longer represent</p> <p>15 the client in this regard.</p> <p>16 <b>Q. Prior to that time?</b></p> <p>17 A. Yes, well prior. I believe that</p> <p>18 our firm was notified the day after the</p> <p>19 Markman Hearing, September 5th, that all</p> <p>20 responsibility in connection with the '160</p> <p>21 Patent and the Medtronic litigation was</p> <p>22 being transferred to the Thelen firm, in</p> <p>23 particular Mark Evens would be leading that</p> <p>24 responsibility at the Thelen firm, I</p> <p>25 believe the specific date was September 5,</p>	<p style="text-align: right;">Page 64</p> <p>1 <b>P. Sutton</b></p> <p>2 of mine at Thelen, is related to the family</p> <p>3 of Dr. Stephen Covan, and they wanted to</p> <p>4 help him by transferring -- they had no</p> <p>5 problem with the quality of our work, but</p> <p>6 they wanted him to benefit from the monies</p> <p>7 generated by the work on the '160 Patent</p> <p>8 and the Medtronic litigation and all</p> <p>9 aspects of those two.</p> <p>10 <b>Q. So it's your testimony then, I</b></p> <p>11 <b>want to make sure I got this right, it's</b></p> <p>12 <b>your testimony then that after September 5,</b></p> <p>13 <b>2002 when this conversation you say</b></p> <p>14 <b>occurred, Greenberg stopped preparing</b></p> <p>15 <b>reports, docket reports for the '160</b></p> <p>16 <b>Patent?</b></p> <p>17 A. That's not my testimony.</p> <p>18 <b>Q. What part of what I said is</b></p> <p>19 <b>wrong?</b></p> <p>20 MR. CHU: Please --</p> <p>21 MR. LODEN: If you have an</p> <p>22 objection, under the federal rules,</p> <p>23 Justin, you can say, "Objection,</p> <p>24 form." That's it.</p> <p>25 BY MR. LODEN:</p>
<p style="text-align: right;">Page 63</p> <p>1 P. Sutton</p> <p>2 2002.</p> <p>3 <b>Q. Who informed you of that transfer</b></p> <p>4 <b>on September 5, 2002?</b></p> <p>5 A. Our firm was notified to that</p> <p>6 effect by Alan Fell and that was confirmed</p> <p>7 to our firm by Dr. Steve Covan, who</p> <p>8 indicated that he wanted a relative of his</p> <p>9 family, Mark Evens, to assume</p> <p>10 responsibility in all effects for the '160</p> <p>11 Patent and the Medtronic litigation.</p> <p>12 That was the first formal notice</p> <p>13 that our, that we would no longer be</p> <p>14 representing Quickie with respect to any</p> <p>15 aspect of the '160 Patent.</p> <p>16 <b>Q. And that was a verbal notice?</b></p> <p>17 A. The initial notice was verbal,</p> <p>18 and of course written notices followed.</p> <p>19 <b>Q. Did they explain why they no</b></p> <p>20 <b>longer wanted Greenberg Traurig to</b></p> <p>21 <b>represent Quickie?</b></p> <p>22 MR. CHU: I think he just</p> <p>23 explained it.</p> <p>24 A. Yes. As I just indicated in my</p> <p>25 prior answer, Mark Evens, a former partner</p>	<p style="text-align: right;">Page 65</p> <p>1 P. Sutton</p> <p>2 <b>Q. Please answer my question.</b></p> <p>3 MR. CHU: Excuse me. I haven't</p> <p>4 said a thing.</p> <p>5 MR. LODEN: Well, you've been</p> <p>6 offering speaking objections</p> <p>7 throughout, but it's now going to</p> <p>8 stop. If you have an objection, say</p> <p>9 your objection and then the witness</p> <p>10 can answer, unless you're directing</p> <p>11 the witness not to answer.</p> <p>12 A. All aspects of your statement</p> <p>13 just now are not accurate.</p> <p>14 MR. CHU: And for the future,</p> <p>15 please ask the witness a question as</p> <p>16 to facts, not about arguing with your</p> <p>17 questions.</p> <p>18 MR. LODEN: Justin, please abide</p> <p>19 by the rules. I will do the same when</p> <p>20 you're deposing our witnesses. I only</p> <p>21 ask for the same professional courtesy</p> <p>22 from you.</p> <p>23 Thank you.</p> <p>24 MR. CHU: And I've heard a lot</p> <p>25 from you, so I'm going to stop, but --</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 66</p> <p>1 P. Sutton</p> <p>2 MR. LODEN: Thank you, I</p> <p>3 appreciate you stopping.</p> <p>4 MR. CHU: Please let me speak</p> <p>5 without you interrupting me, as I've</p> <p>6 allowed you to do.</p> <p>7 BY MR. LODEN:</p> <p>8 <b>Q. Mr. Sutton, did Greenberg ever</b></p> <p>9 <b>prepare a monthly docket report for the</b></p> <p>10 <b>'160 Patent?</b></p> <p>11 A. It did not generate a monthly</p> <p>12 docket report after being notified that it</p> <p>13 would no longer be representing Quickie</p> <p>14 with respect to the '160 Patent and the</p> <p>15 Medtronic litigation.</p> <p>16 MR. LODEN: Objection.</p> <p>17 Nonresponsive. I'll read back my</p> <p>18 exact question to you.</p> <p>19 BY MR. LODEN:</p> <p>20 <b>Q. Mr. Sutton, did Greenberg ever</b></p> <p>21 <b>prepare a monthly docket report for the</b></p> <p>22 <b>'160 Patent?</b></p> <p>23 A. I don't understand your question</p> <p>24 because as I've testified, well prior to</p> <p>25 the date that the maintenance fee was due,</p>	<p style="text-align: right;">Page 68</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>for the '160 Patent?</b></p> <p>3 A. Would you please indicate a due</p> <p>4 date for which you're referring to?</p> <p>5 <b>Q. I've said it numerous times; any</b></p> <p>6 <b>time, any time, at any time in history.</b></p> <p>7 A. No, I'm asking you to please help</p> <p>8 me so I can answer you completely and</p> <p>9 fully.</p> <p>10 Would you please provide me with</p> <p>11 a due date that would appear on a monthly</p> <p>12 docket report that your question relates to</p> <p>13 and I'll be happy to answer it.</p> <p>14 MR. CHU: Steve -- can I go off</p> <p>15 the record just to talk to you.</p> <p>16 (Whereupon, an off-the-record</p> <p>17 discussion was held.)</p> <p>18 A. The monthly docket report</p> <p>19 reflects due dates or matters that require</p> <p>20 attention within the month thereafter.</p> <p>21 I'm not aware of any due dates or</p> <p>22 matters that require attention that</p> <p>23 occurred affecting the '160 Patent prior to</p> <p>24 our firm's Power of Attorney being revoked.</p> <p>25 So that your question really, it</p>
<p style="text-align: right;">Page 67</p> <p>1 P. Sutton</p> <p>2 Greenberg Traurig was notified that it was</p> <p>3 not to be representing Quickie and its</p> <p>4 Power of Attorney was revoked. So it would</p> <p>5 be inappropriate to be generating a report</p> <p>6 for an ex-client who had revoked our power.</p> <p>7 <b>Q. Are you done?</b></p> <p>8 A. I'm not sure I understand.</p> <p>9 <b>Q. Are you finished with your</b></p> <p>10 <b>answer?</b></p> <p>11 A. I am.</p> <p>12 MR. LODEN: Objection.</p> <p>13 Nonresponsive.</p> <p>14 BY MR. LODEN:</p> <p>15 <b>Q. My question is very simple.</b></p> <p>16 <b>As you sit here today, are you</b></p> <p>17 <b>aware of Greenberg ever, at any time,</b></p> <p>18 <b>preparing a monthly docket report for the</b></p> <p>19 <b>'160 Patent?</b></p> <p>20 A. I believe I've answered that</p> <p>21 question fully and given you the reasons</p> <p>22 for my answer.</p> <p>23 <b>Q. So the answer is, as you sit here</b></p> <p>24 <b>today, you're not aware of any monthly</b></p> <p>25 <b>docket reports being prepared by Greenberg</b></p>	<p style="text-align: right;">Page 69</p> <p>1 P. Sutton</p> <p>2 doesn't make sense frankly.</p> <p>3 <b>Q. Looking back at Exhibit 3, up on</b></p> <p>4 <b>the top left-hand corner -- and I apologize</b></p> <p>5 <b>for the quality of the copy here, this is</b></p> <p>6 <b>the way it was produced to us -- but you</b></p> <p>7 <b>will see it looks like GT number up there</b></p> <p>8 <b>on the top?</b></p> <p>9 A. I believe that those letters</p> <p>10 reflect GT number sign.</p> <p>11 <b>Q. And then out there to the right</b></p> <p>12 <b>there is a number.</b></p> <p>13 <b>What does that number reflect?</b></p> <p>14 A. There are five digits followed by</p> <p>15 a period and then six digits and the</p> <p>16 letters U.S. The five digits that precede</p> <p>17 the period reflects the Greenberg Traurig</p> <p>18 client number assigned to that client.</p> <p>19 The numerical, the six numerical</p> <p>20 digits that follow that period reflect the</p> <p>21 matter number for that client that this</p> <p>22 relates to, and the U.S. reflects that the</p> <p>23 matter that's a subject of Exhibit 3 is a</p> <p>24 United States matter as opposed to one for</p> <p>25 a foreign country.</p>



19 (Pages 70 to 73)

<p style="text-align: right;">Page 70</p> <p>1 P. Sutton</p> <p>2 <b>Q. So then if I'm understanding that</b></p> <p>3 <b>entry correct, is 51822, is that the client</b></p> <p>4 <b>number assigned for Quickie by Greenberg</b></p> <p>5 <b>Traurig?</b></p> <p>6 A. It's my understanding that the</p> <p>7 number 51822 is one of several -- I'm</p> <p>8 sorry, strike that, please, I may have</p> <p>9 misspoken.</p> <p>10 I believe the number 51822</p> <p>11 references a client number associated with</p> <p>12 Quickie. I don't know whether that's the</p> <p>13 only client number associated with Quickie.</p> <p>14 <b>Q. Okay.</b></p> <p>15 <b>And then the 6 digits after the</b></p> <p>16 <b>period there is 010700, did I understand</b></p> <p>17 <b>you to say that that is the matter for</b></p> <p>18 <b>which this patent record sheet was created?</b></p> <p>19 A. The number 010700 reflects the</p> <p>20 matter associated with the client number</p> <p>21 51822 for which this Exhibit 3 is</p> <p>22 referencing, with the U.S. being United</p> <p>23 States.</p> <p>24 There are times that other</p> <p>25 letters are used to abbreviate the names of</p>	<p style="text-align: right;">Page 72</p> <p>1 P. Sutton</p> <p>2 <b>Q. So in other words, it says matter</b></p> <p>3 <b>number 010700 has been transferred to</b></p> <p>4 <b>another firm and Greenberg is no longer</b></p> <p>5 <b>responsible for that matter?</b></p> <p>6 A. I believe you're trying to</p> <p>7 summarize my testimony. I think my</p> <p>8 testimony is accurate and you can draw your</p> <p>9 own conclusions, but I think abbreviating</p> <p>10 my testimony --</p> <p>11 <b>Q. Well, okay. Let me read back</b></p> <p>12 <b>your testimony then.</b></p> <p>13 <b>You said, "The field indicates</b></p> <p>14 <b>that all responsibility, the term transfer</b></p> <p>15 <b>indicates that, in that field indicates</b></p> <p>16 <b>that our firm's responsibility in all</b></p> <p>17 <b>respects has been revoked on this</b></p> <p>18 <b>particular case or matter."</b></p> <p>19 A. No, I perhaps have misspoken. It</p> <p>20 indicates, transfer indicates that the</p> <p>21 matter has been transferred to another firm</p> <p>22 per the instructions of the client.</p> <p>23 <b>Q. Okay.</b></p> <p>24 A. And further on down on April 2,</p> <p>25 2003, there is an entry that indicates that</p>
<p style="text-align: right;">Page 71</p> <p>1 P. Sutton</p> <p>2 foreign countries other than the U.S. which</p> <p>3 may carry either the same matter number or</p> <p>4 the same GT client number.</p> <p>5 <b>Q. Okay.</b></p> <p>6 <b>Going to the right-hand column,</b></p> <p>7 <b>it looks like the third line, do you see</b></p> <p>8 <b>where there is STAT and then in the field</b></p> <p>9 <b>it says transfer?</b></p> <p>10 <b>Do you see that on the right-hand</b></p> <p>11 <b>side?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. What does that entry reflect?</b></p> <p>14 A. I believe that the letters STAT</p> <p>15 refer to the status of this particular case</p> <p>16 or matter. The field indicates that all</p> <p>17 responsibility, the term transfer indicates</p> <p>18 that, in that field indicates that our</p> <p>19 firm's responsibility in all respects has</p> <p>20 been revoked by the client that another</p> <p>21 firm or the client is responsible for this,</p> <p>22 and by the presence of the word transfer,</p> <p>23 this case will not appear in certain</p> <p>24 reports generated thereafter such as</p> <p>25 monthly reports.</p>	<p style="text-align: right;">Page 73</p> <p>1 P. Sutton</p> <p>2 our firm's Power of Attorney has been</p> <p>3 revoked.</p> <p>4 <b>Q. Looking at that same third line</b></p> <p>5 <b>going to the left, you'll see there's a</b></p> <p>6 <b>typed field.</b></p> <p>7 <b>Do you see that?</b></p> <p>8 A. No. Where are you? Oh yes, yes.</p> <p>9 T-Y-P-E, yes.</p> <p>10 <b>Q. Do you know what that UTL refers</b></p> <p>11 <b>to?</b></p> <p>12 A. That refers to the fact that the</p> <p>13 subject case is a utility patent as opposed</p> <p>14 to some other type of patent.</p> <p>15 <b>Q. And then to the left of that,</b></p> <p>16 <b>again, it's cut off, but it looks like --</b></p> <p>17 <b>is that PATS number, do you see that?</b></p> <p>18 A. I can't read it, but I see the</p> <p>19 letters ATS number sign, I see a number</p> <p>20 that follows it, but --</p> <p>21 <b>Q. Do you know what that number</b></p> <p>22 <b>refers to, or is that number familiar to</b></p> <p>23 <b>you?</b></p> <p>24 A. That number is not familiar to</p> <p>25 me.</p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 74</p> <p>1 P. Sutton</p> <p>2 <b>Q. Okay.</b></p> <p>3 A. I can find out what that number</p> <p>4 is, but as I'm testifying right now at this</p> <p>5 moment, that number is not familiar to me.</p> <p>6 <b>Q. Okay.</b></p> <p>7 <b>Looking down at where the columns</b></p> <p>8 <b>are, action, base, do-in -- do you see</b></p> <p>9 <b>where I'm at?</b></p> <p>10 A. Yes, yes.</p> <p>11 <b>Q. Those columns.</b></p> <p>12 <b>We've already talked about the</b></p> <p>13 <b>POA, I believe you said that that indicates</b></p> <p>14 <b>Power of Attorney revoked?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. And then the date there that it</b></p> <p>17 <b>was revoked, April 2, 2003.</b></p> <p>18 <b>Going to the second line in that</b></p> <p>19 <b>section, if you could just start from the</b></p> <p>20 <b>left and go to the right and tell me what</b></p> <p>21 <b>that first entry there means, first</b></p> <p>22 <b>maintenance fee due, what are those</b></p> <p>23 <b>entries?</b></p> <p>24 <b>I can take it one by one if you'd</b></p> <p>25 <b>rather do it that way.</b></p>	<p style="text-align: right;">Page 76</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>Do you know what that column O</b></p> <p>3 <b>refers to?</b></p> <p>4 A. Yes, that indicates that there is</p> <p>5 no maintenance fee due as of the date of</p> <p>6 that entry. In other words, there's no</p> <p>7 upcoming date that we are responsible for.</p> <p>8 <b>Q. What does O stand for in that</b></p> <p>9 <b>column heading?</b></p> <p>10 A. Bear with me. I believe that may</p> <p>11 refer to other, but I'm not certain and I</p> <p>12 have to confirm that.</p> <p>13 <b>Q. Okay.</b></p> <p>14 <b>First maint fee due, that means</b></p> <p>15 <b>first maintenance fee due, right?</b></p> <p>16 A. Yes, I believe that's what that</p> <p>17 entries means.</p> <p>18 <b>Q. Then you've explained that</b></p> <p>19 <b>5/26/2000 is the issue date for the</b></p> <p>20 <b>patent --</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. -- due, and it looks like 42M.</b></p> <p>23 <b>Does that refers to 42 months?</b></p> <p>24 A. That would reflect a 3.5-year</p> <p>25 period for which the first maintenance fee</p>
<p style="text-align: right;">Page 75</p> <p>1 <b>P. Sutton</b></p> <p>2 A. Do you have a copy of the patent</p> <p>3 handy?</p> <p>4 <b>Q. I don't.</b></p> <p>5 MR. CHU: You want me to show it</p> <p>6 to him?</p> <p>7 MR. LODEN: Sure, if he wants to</p> <p>8 look at it.</p> <p>9 A. I believe that the base date</p> <p>10 under the base is the date from which</p> <p>11 you're calculating the -- yeah, the date</p> <p>12 May 23, 2000 is the date that the patent</p> <p>13 was granted.</p> <p>14 <b>Q. Okay.</b></p> <p>15 <b>Going to the far left of that</b></p> <p>16 <b>line, it says M1.</b></p> <p>17 <b>Do you see that?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. What does that refer to?</b></p> <p>20 A. I believe that M1 is the first of</p> <p>21 three maintenance fees.</p> <p>22 <b>Q. Okay.</b></p> <p>23 <b>And to the right there under the</b></p> <p>24 <b>column, it looks like just O, there is an</b></p> <p>25 <b>N.</b></p>	<p style="text-align: right;">Page 77</p> <p>1 P. Sutton</p> <p>2 would be due.</p> <p>3 <b>Q. Which, if my math is correct, is</b></p> <p>4 <b>42 months?</b></p> <p>5 A. Correct.</p> <p>6 <b>Q. That's 11/23/2003, is that the</b></p> <p>7 <b>due date for the first maintenance fee</b></p> <p>8 <b>then?</b></p> <p>9 A. I believe that's the beginning --</p> <p>10 bear with me now -- I believe that that's</p> <p>11 the beginning of a period any time within</p> <p>12 which a maintenance fee can be timely paid</p> <p>13 by our firm or the client or any of the</p> <p>14 other attorneys who had this information to</p> <p>15 put in their docket systems.</p> <p>16 <b>Q. And actually, now that I look at</b></p> <p>17 <b>it, it looks like 11/23/03 is 3.5 years</b></p> <p>18 <b>from 5/23/03, the 3.5-year period that you</b></p> <p>19 <b>referred to previously.</b></p> <p>20 <b>Do you see that?</b></p> <p>21 A. I believe your calculation is</p> <p>22 correct.</p> <p>23 <b>Q. And then there is two columns</b></p> <p>24 <b>under the heading EXTNS -- does that stand</b></p> <p>25 <b>for extensions?</b></p>



21 (Pages 78 to 81)

<p style="text-align: right;">Page 78</p> <p>1 <b>P. Sutton</b></p> <p>2 A. I believe that that's the</p> <p>3 abbreviation for the term to define those</p> <p>4 fields thereunder.</p> <p>5 <b>Q. And the 1-6, does that refer to</b></p> <p>6 <b>there's one extension and it's a six-month</b></p> <p>7 <b>extension?</b></p> <p>8 A. I believe that that's what those</p> <p>9 numbers relate to.</p> <p>10 <b>Q. Okay.</b></p> <p>11 <b>And then under the heading final,</b></p> <p>12 <b>you'll see there is a 5/23/2004, which is</b></p> <p>13 <b>four years after the issue date, is that</b></p> <p>14 <b>the last date upon which the maintenance</b></p> <p>15 <b>fee can be paid timely?</b></p> <p>16 A. Actually, it's the last date on</p> <p>17 which a maintenance fee can be paid, but</p> <p>18 not necessarily the ultimate last date that</p> <p>19 a maintenance fee can be paid to preserve</p> <p>20 the patent.</p> <p>21 <b>Q. Understood.</b></p> <p>22 <b>But -- so what's the significance</b></p> <p>23 <b>of May 23, 2004 then, why was that number</b></p> <p>24 <b>entered?</b></p> <p>25 A. After that date, something other</p>	<p style="text-align: right;">Page 80</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>Power of Attorney and the responsibility</b></p> <p>3 <b>for this case.</b></p> <p>4 <b>That's the date of the formal</b></p> <p>5 <b>revocation of the Power of Attorney, but</b></p> <p>6 <b>that is but one of -- that date reflects</b></p> <p>7 <b>the date on which the PTO revoked per the</b></p> <p>8 <b>client's request our Power of Attorney so</b></p> <p>9 <b>that we would no longer be responsible for</b></p> <p>10 <b>the payment of any maintenance fees.</b></p> <p>11 <b>Q. Well, the response in that column</b></p> <p>12 <b>heading, does that refer to a response to</b></p> <p>13 <b>the maintenance fee deadline or</b></p> <p>14 <b>responsibility?</b></p> <p>15 A. In this case, we enter -- if our</p> <p>16 Power of Attorney is revoked and we're</p> <p>17 asked to no longer do anything with respect</p> <p>18 to, for example, here the '160 Patent, or</p> <p>19 anything associated with that '160 Patent,</p> <p>20 we put in that field the date of the formal</p> <p>21 revocation of our authority to do anything</p> <p>22 in that regard, our authority to act as</p> <p>23 attorneys for the client in that regard,</p> <p>24 and that's the reason for the entry of</p> <p>25 4/2/2003 in each of the M1, M2 and M3, the</p>
<p style="text-align: right;">Page 79</p> <p>1 <b>P. Sutton</b></p> <p>2 would be required other than the normal</p> <p>3 maintenance fee, there would have to be an</p> <p>4 additional fee or one or more other things</p> <p>5 required to be filed with the PTO.</p> <p>6 <b>Q. Okay.</b></p> <p>7 <b>The next column to the right EXT,</b></p> <p>8 <b>is that extension?</b></p> <p>9 A. That's my understanding.</p> <p>10 <b>Q. And it says 0 there. What does</b></p> <p>11 <b>the 0 refer to?</b></p> <p>12 A. That's, I believe, filled in the</p> <p>13 default field -- I'm sorry, that's the</p> <p>14 default entry in that field unless it's</p> <p>15 modified by the person handling the</p> <p>16 computerized docketing system.</p> <p>17 <b>Q. Okay.</b></p> <p>18 <b>Next column to the right you'll</b></p> <p>19 <b>see that April 2, 2003 date under the</b></p> <p>20 <b>column response.</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. What does that refer to?</b></p> <p>23 A. That indicates that a response to</p> <p>24 the due date for the first maintenance fee</p> <p>25 was taken care of via the revocation of the</p>	<p style="text-align: right;">Page 81</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>three maintenance fees there.</b></p> <p>3 <b>That indicates that someone else,</b></p> <p>4 <b>this report indicates that the client has</b></p> <p>5 <b>asked and instructed someone else to do</b></p> <p>6 <b>this activity.</b></p> <p>7 <b>MR. LODEN: Objection.</b></p> <p>8 <b>Nonresponsive.</b></p> <p>9 <b>BY MR. LODEN:</b></p> <p>10 <b>Q. The response -- do you see the</b></p> <p>11 <b>column entitled Response, do you see that?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. Doesn't that heading reflect the</b></p> <p>14 <b>field in which the software records the</b></p> <p>15 <b>date upon which a response was taken to the</b></p> <p>16 <b>item which was docketed?</b></p> <p>17 A. Only if our Power of Attorney had</p> <p>18 not been revoked and had we filed a</p> <p>19 response, would that date of the filing of</p> <p>20 the response have been entered there.</p> <p>21 If our Power of Attorney had not</p> <p>22 been revoked or, for example, Mark Evens</p> <p>23 firm, the Thelen firm, knowing that it</p> <p>24 would be taking responsibility for the '160</p> <p>25 Patent, it would enter the date that it</p>

22 (Pages 82 to 85)

<p style="text-align: right;">Page 82</p> <p>1 P. Sutton</p> <p>2 paid the maintenance fee had it paid that</p> <p>3 maintenance fee pursuant to the client's</p> <p>4 request.</p> <p>5 MR. LODEN: Objection.</p> <p>6 Nonresponsive.</p> <p>7 BY MR. LODEN:</p> <p>8 <b>Q. Let me ask the question a little</b></p> <p>9 <b>bit different way then.</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. That field is the field in which</b></p> <p>12 <b>whatever response is being taken -- well,</b></p> <p>13 <b>strike that.</b></p> <p>14 <b>Had Greenberg paid the</b></p> <p>15 <b>maintenance fee for the '160 Patent --</b></p> <p>16 <b>let's just assume that they had paid it,</b></p> <p>17 <b>and that they paid it on May 1, 2004.</b></p> <p>18 <b>In that response heading would an</b></p> <p>19 <b>entry be placed May 2004 under that</b></p> <p>20 <b>hypothetical?</b></p> <p>21 A. As you state, it's a hypothetical</p> <p>22 and I'd like to consider that question, but</p> <p>23 it has no relationship to anything that</p> <p>24 actually has occurred.</p> <p>25 <b>Q. Well, take all the time you need</b></p>	<p style="text-align: right;">Page 84</p> <p>1 P. Sutton</p> <p>2 field is, under our system, a totally</p> <p>3 appropriate entry of the date on which our</p> <p>4 Power of Attorney was revoked, which</p> <p>5 removed our responsibility and</p> <p>6 appropriateness of doing anything further</p> <p>7 for this client in regards to this case.</p> <p>8 So your hypothetical,</p> <p>9 notwithstanding the date 4/2/2003 that</p> <p>10 appears, there is an entirely appropriate</p> <p>11 entry.</p> <p>12 MR. LODEN: Objection.</p> <p>13 Nonresponsive.</p> <p>14 BY MR. LODEN:</p> <p>15 <b>Q. Let me just say I understand that</b></p> <p>16 <b>you want to talk today about the transfer</b></p> <p>17 <b>to Mark Evens at Thelen and the revocation</b></p> <p>18 <b>of the Power of Attorney, and I understand</b></p> <p>19 <b>that that's relevant and we're going to</b></p> <p>20 <b>talk about it.</b></p> <p>21 <b>I promise you we will talk about</b></p> <p>22 <b>it, but right now I'm not asking questions</b></p> <p>23 <b>about that, and when you continue to bring</b></p> <p>24 <b>it up and not respond to the question, it's</b></p> <p>25 <b>just delaying and extending our deposition</b></p>
<p style="text-align: right;">Page 83</p> <p>1 P. Sutton</p> <p>2 <b>to consider it, I'm here all week --</b></p> <p>3 A. All right, I'll be happy to see</p> <p>4 if I can supplement that response.</p> <p>5 <b>Q. Well, my question is very simple,</b></p> <p>6 <b>Mr. Sutton.</b></p> <p>7 <b>My question is: What goes in the</b></p> <p>8 <b>response column there? I'm trying to ask</b></p> <p>9 <b>it multiple ways and I'm not getting a</b></p> <p>10 <b>clean answer from you.</b></p> <p>11 <b>My question is: Isn't that</b></p> <p>12 <b>response column the field in which you</b></p> <p>13 <b>indicated what response Greenberg Traurig</b></p> <p>14 <b>took in response to the item which was</b></p> <p>15 <b>scheduled?</b></p> <p>16 MR. CHU: Objection.</p> <p>17 A. No. You haven't heard my answer.</p> <p>18 <b>Q. No, I've heard your answer. I</b></p> <p>19 <b>understand you want to talk about</b></p> <p>20 <b>transfer --</b></p> <p>21 A. Please, I'm in the middle of</p> <p>22 telling you something. Do you want to hear</p> <p>23 it?</p> <p>24 <b>Q. Go ahead, I apologize.</b></p> <p>25 A. The field, the entry in that</p>	<p style="text-align: right;">Page 85</p> <p>1 P. Sutton</p> <p>2 <b>today, and I'm trying to ask a very simple</b></p> <p>3 <b>question, and my question is: What is the</b></p> <p>4 <b>purpose of that response field?</b></p> <p>5 A. I'll tell you one more time, and</p> <p>6 in doing so, I will tell you that I have no</p> <p>7 special interest in giving you answers</p> <p>8 referring to the transfer, but the document</p> <p>9 that you've asked me to refer to, Exhibit</p> <p>10 3, has transfer on it and that's why I'm</p> <p>11 including that in my response.</p> <p>12 The field under the column</p> <p>13 response includes either if we paid a</p> <p>14 maintenance fee, the date it is paid, or as</p> <p>15 in the present circumstances where our</p> <p>16 power of attorney is revoked, the date on</p> <p>17 which our Power of Attorney is revoked as a</p> <p>18 result of the transfer of authority to act</p> <p>19 on this matter per the client's express</p> <p>20 instructions, and per, frankly, the sworn</p> <p>21 testimony of Aubrey Galloway in his October</p> <p>22 10, 2006 oath and the Maier &amp; Maier</p> <p>23 supplement to the petition on December 1,</p> <p>24 2006.</p> <p>25 So I'm trying to give you</p>

23 (Pages 86 to 89)

<p style="text-align: right;">Page 86</p> <p>1 P. Sutton</p> <p>2 complete truthful answers. It sounds like</p> <p>3 you're not happy with those answers, but I</p> <p>4 can't help that.</p> <p>5 MR. LODEN: Objection.</p> <p>6 Nonresponsive.</p> <p>7 BY MR. LODEN:</p> <p>8 <b>Q. Other than the date upon which</b></p> <p>9 <b>Greenberg's Power of Attorney was revoked,</b></p> <p>10 <b>what other types of information is placed</b></p> <p>11 <b>in the response column?</b></p> <p>12 MR. CHU: Objection.</p> <p>13 BY MR. LODEN:</p> <p>14 <b>Q. Just in general, in general,</b></p> <p>15 <b>patents, not talking about the '160 Patent,</b></p> <p>16 <b>but in the DIAMS software system that</b></p> <p>17 <b>you've testified that you set up at</b></p> <p>18 <b>Greenberg, when Greenberg's Power of</b></p> <p>19 <b>Attorney is not revoked what other types of</b></p> <p>20 <b>information is placed in that response</b></p> <p>21 <b>field?</b></p> <p>22 A. Your question recites facts that</p> <p>23 do not accurately reflect my prior</p> <p>24 testimony. However, to the extent that I</p> <p>25 understand your question, as far as what</p>	<p style="text-align: right;">Page 88</p> <p>1 P. Sutton</p> <p>2 got this right.</p> <p>3 I believe earlier today, and tell</p> <p>4 me if I'm wrong, but I believe earlier</p> <p>5 today you said that when you came to</p> <p>6 Greenberg Taurig, you assisted in setting</p> <p>7 up the docketing system that we're</p> <p>8 referring to here?</p> <p>9 A. When I left Thelen to join</p> <p>10 Greenberg Taurig, I set up the</p> <p>11 computerized docketing system for Greenberg</p> <p>12 Taurig that provides the type of</p> <p>13 information that you see here in Exhibit 3.</p> <p>14 <b>Q. And as part of that setting up</b></p> <p>15 <b>process, were there procedures put in place</b></p> <p>16 <b>or any other sort of directives given to</b></p> <p>17 <b>Greenberg Taurig employees on how to use</b></p> <p>18 <b>the system?</b></p> <p>19 A. When I moved my group from Thelen</p> <p>20 to Greenberg Taurig, it included a number</p> <p>21 of attorneys and one or more paralegals who</p> <p>22 were already familiar and running the</p> <p>23 computerized system at Thelen, and we</p> <p>24 simply moved that entire group to Greenberg</p> <p>25 Taurig so that we had people who for years</p>
<p style="text-align: right;">Page 87</p> <p>1 P. Sutton</p> <p>2 types of entries DIAMS would include in</p> <p>3 those fields I would have to review that</p> <p>4 area of your query further.</p> <p>5 <b>Q. What would you want to review?</b></p> <p>6 A. I have to consider what -- I'd</p> <p>7 have to consider the question more because</p> <p>8 I have not been asked that question before,</p> <p>9 and when I consider it, I'll know at that</p> <p>10 point what it is that I need to review. It</p> <p>11 may be that if we take a break I will be</p> <p>12 able to either remember or I can inquire</p> <p>13 potentially and if you are interested in</p> <p>14 getting that answer.</p> <p>15 <b>Q. Well, I certainly am. We've</b></p> <p>16 <b>spent enough time on it. I'm certainly</b></p> <p>17 <b>interested in getting the answer.</b></p> <p>18 Let me see if we can approach it</p> <p>19 this way.</p> <p>20 Does Greenberg have a manual on</p> <p>21 what data goes in the various fields that</p> <p>22 DIAMS includes?</p> <p>23 A. I don't know the answer to that</p> <p>24 question as I'm sitting here right now.</p> <p>25 <b>Q. When you -- I want to make sure I</b></p>	<p style="text-align: right;">Page 89</p> <p>1 P. Sutton</p> <p>2 had operated the computerized docketing</p> <p>3 system and knew its ins and outs and from</p> <p>4 time to time benefitted from support from</p> <p>5 the software company.</p> <p>6 <b>Q. And those same people that you</b></p> <p>7 <b>said moved from Thelen to Greenberg, were</b></p> <p>8 <b>those the same paralegals that, or the same</b></p> <p>9 <b>staff, excuse me, that was responsible for</b></p> <p>10 <b>entering the data on the patent record</b></p> <p>11 <b>sheet reflected in Exhibit 3?</b></p> <p>12 A. I don't like -- the people who</p> <p>13 entered data on Exhibit 3 were among those</p> <p>14 that moved with me from Thelen to Greenberg</p> <p>15 Taurig.</p> <p>16 <b>Q. So then who entered the data on</b></p> <p>17 <b>Exhibit 3?</b></p> <p>18 A. One of several paralegals who are</p> <p>19 or have been employees at Greenberg</p> <p>20 Taurig.</p> <p>21 <b>Q. Do you know in particular who by</b></p> <p>22 <b>name?</b></p> <p>23 A. I can't be certain, so I'd rather</p> <p>24 not guess.</p> <p>25 <b>Q. Okay.</b></p>

24 (Pages 90 to 93)

<p style="text-align: right;">Page 90</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>If you wanted to be certain, is</b></p> <p>3 <b>there someplace that you could go check?</b></p> <p>4 A. Perhaps. If you ask that I do,</p> <p>5 I'll be happy to do so.</p> <p>6 <b>Q. I'm asking that you do so.</b></p> <p>7 <b>Who are the possibilities?</b></p> <p>8 A. I'd rather not guess. So why</p> <p>9 don't I see if I can get you an accurate</p> <p>10 answer.</p> <p>11 <b>Q. I would appreciate that.</b></p> <p>12 <b>So the paralegals --</b></p> <p>13 A. I'm sorry, if I may, I just</p> <p>14 recalled that Phyllis Cordes, I believe,</p> <p>15 made the entry of the application has been</p> <p>16 transferred to another firm, it's my</p> <p>17 understanding that she is the paralegal who</p> <p>18 made that entry. So we have at least that</p> <p>19 one name.</p> <p>20 <b>Q. If you look back to Exhibit 3, on</b></p> <p>21 <b>the top left-hand corner, you'll see an</b></p> <p>22 <b>OPER heading and then PC.</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. Is that Phyllis Cordes, PC?</b></p> <p>25 A. It probably is, but I can't be</p>	<p style="text-align: right;">Page 92</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>background and knowledge?</b></p> <p>3 A. I believe an intellectual</p> <p>4 property boutique.</p> <p>5 <b>Q. So am I correct in saying then</b></p> <p>6 <b>that it's actually the paralegals such as</b></p> <p>7 <b>Ms. Cordes that enter the data into the</b></p> <p>8 <b>DIAMS docketing system, is that what you're</b></p> <p>9 <b>saying?</b></p> <p>10 A. Paralegals are among those who</p> <p>11 enter data into the computerized docketing</p> <p>12 system.</p> <p>13 <b>Q. Who else other than paralegals</b></p> <p>14 <b>enters data into the computerized docketing</b></p> <p>15 <b>system?</b></p> <p>16 A. I can't recall anybody right now,</p> <p>17 but I believe it would be somebody with</p> <p>18 either that -- it would be somebody with</p> <p>19 that background and responsibility.</p> <p>20 <b>Q. Well, I mean, are you referring</b></p> <p>21 <b>to attorneys?</b></p> <p>22 A. While I believe attorneys -- I</p> <p>23 believe that paralegals are responsible for</p> <p>24 entering data into the computerized</p> <p>25 docketing system.</p>
<p style="text-align: right;">Page 91</p> <p>1 P. Sutton</p> <p>2 certain.</p> <p>3 <b>Q. And was Phyllis Cordes one of the</b></p> <p>4 <b>Thelen employees who came over with you to</b></p> <p>5 <b>Greenberg Traurig?</b></p> <p>6 A. She was not.</p> <p>7 <b>Q. So what training was Ms. Cordes</b></p> <p>8 <b>provided on the use of the DIAMS docketing</b></p> <p>9 <b>system?</b></p> <p>10 A. Almost all paralegals associated</p> <p>11 with the intellectual property computerized</p> <p>12 docketing system are hired already having</p> <p>13 experience and having operated such systems</p> <p>14 at other firms before we hired them.</p> <p>15 There are a few exceptions to</p> <p>16 that, where there is hands-on, day-to-day</p> <p>17 training and oversight that extends over in</p> <p>18 some cases years before those people are</p> <p>19 given the responsibility.</p> <p>20 <b>Q. And which of those two categories</b></p> <p>21 <b>did Ms. Cordes fall into?</b></p> <p>22 A. Ms. Cordes came to our firm with</p> <p>23 extensive background and knowledge upon</p> <p>24 running such a system.</p> <p>25 <b>Q. Where did she obtain that</b></p>	<p style="text-align: right;">Page 93</p> <p>1 P. Sutton</p> <p>2 <b>Q. And where do paralegals obtain</b></p> <p>3 <b>the data that they enter into the docketing</b></p> <p>4 <b>system?</b></p> <p>5 A. By way of example, on our firm's</p> <p>6 receipt of the revocation of Greenberg</p> <p>7 Traurig's Power of Attorney on April 2,</p> <p>8 2003, that document from the Patent and</p> <p>9 Trademark Office would be the basis of the</p> <p>10 entry of the information in the database.</p> <p>11 <b>Q. But that document was sent to the</b></p> <p>12 <b>attorney in charge, correct, is addressed</b></p> <p>13 <b>to the attorney of record at Greenberg,</b></p> <p>14 <b>right?</b></p> <p>15 A. I'm not sure I understand your</p> <p>16 question.</p> <p>17 <b>Q. Well, my question is: How did</b></p> <p>18 <b>the document that you referred to get into</b></p> <p>19 <b>the hands of the paralegal who was entering</b></p> <p>20 <b>the data into the computerized docketing</b></p> <p>21 <b>system?</b></p> <p>22 A. I believe that there is a</p> <p>23 procedure set up where communications from</p> <p>24 the U.S. Patent and Trademark Office are</p> <p>25 sorted and separated during the mail,</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 94</p> <p>1 P. Sutton</p> <p>2 incoming mail process and that the</p> <p>3 paralegal responsible for docketing is</p> <p>4 given a copy of correspondence or documents</p> <p>5 that would require some entry into the</p> <p>6 computerized docketing system.</p> <p>7 <b>Q. Well, how about for the</b></p> <p>8 <b>maintenance fee entries on Exhibit 3, how</b></p> <p>9 <b>were those deadlines communicated to the</b></p> <p>10 <b>paralegal who entered them into the DIAMS</b></p> <p>11 <b>system?</b></p> <p>12 A. I don't understand your question.</p> <p>13 I don't believe your question makes sense,</p> <p>14 frankly.</p> <p>15 <b>Q. What part of it is confusing to</b></p> <p>16 <b>you?</b></p> <p>17 A. The whole thing.</p> <p>18 <b>Q. Let me ask it a different way.</b></p> <p>19 <b>The base date that we referred to</b></p> <p>20 <b>earlier for the first maintenance fee, do</b></p> <p>21 <b>the due date, the final date, where did the</b></p> <p>22 <b>paralegal obtain that information for entry</b></p> <p>23 <b>into the computerized docketing system?</b></p> <p>24 A. The computerized docketing system</p> <p>25 has the capability of itself computing</p>	<p style="text-align: right;">Page 96</p> <p>1 P. Sutton</p> <p>2 <b>Q. Okay.</b></p> <p>3 <b>How about for the GT number, the</b></p> <p>4 <b>client matter number that we spoke to</b></p> <p>5 <b>earlier on the top left corner of Exhibit</b></p> <p>6 <b>3, who told the paralegal or how -- strike</b></p> <p>7 <b>that.</b></p> <p>8 <b>How did the paralegal know what</b></p> <p>9 <b>client matter number to place in that</b></p> <p>10 <b>field?</b></p> <p>11 A. When the mail is sorted, that</p> <p>12 information may appear on the document or</p> <p>13 documents that arrive in the mail, so</p> <p>14 that's one way that the paralegal can</p> <p>15 obtain that information.</p> <p>16 Another way would be to see what</p> <p>17 client the mail relates to, and then our</p> <p>18 firm has a computerized system that our</p> <p>19 folks can access to see what client number</p> <p>20 and what matter number it relates to.</p> <p>21 So enough information is usually</p> <p>22 on the mail to permit the paralegal to</p> <p>23 glean that information and to go to the</p> <p>24 proper part of the database.</p> <p>25 <b>Q. The '160 Patent was issued by the</b></p>
<p style="text-align: right;">Page 95</p> <p>1 P. Sutton</p> <p>2 deadlines as a result of the entry of base</p> <p>3 information so that that's been programmed</p> <p>4 into the system to eliminate possible human</p> <p>5 error, and I believe that that's where</p> <p>6 dates, due dates, that information comes</p> <p>7 from.</p> <p>8 <b>Q. So then are you saying that the</b></p> <p>9 <b>three entries for the first, second and</b></p> <p>10 <b>third maintenance fee due, and then the</b></p> <p>11 <b>data, I guess up to final column there on</b></p> <p>12 <b>Exhibit 3, that that was automatically</b></p> <p>13 <b>filled in by the software?</b></p> <p>14 A. I don't believe the way you've</p> <p>15 characterized it is accurate, but let me</p> <p>16 say that when the paralegal enters base</p> <p>17 information such as the issue date of the</p> <p>18 patent, the date that the patent is</p> <p>19 granted, the base date, that the</p> <p>20 computerized docketing system has been</p> <p>21 programmed with accurate information that</p> <p>22 automatically enters into the fields of the</p> <p>23 due dates for the first, second and third</p> <p>24 maintenance fees, those dates on which</p> <p>25 action is notified.</p>	<p style="text-align: right;">Page 97</p> <p>1 P. Sutton</p> <p>2 <b>PTO prior to Todd Sharinn joining Greenberg</b></p> <p>3 <b>Taurig, correct?</b></p> <p>4 A. I believe Todd Sharinn joined</p> <p>5 Greenberg Taurig May of 2001, and I</p> <p>6 believe the date that the patent was</p> <p>7 granted is May 23rd, 2000.</p> <p>8 <b>Q. Okay.</b></p> <p>9 <b>Was it Todd then or Mr. Sharinn</b></p> <p>10 <b>that asked for the '160 Patent to be</b></p> <p>11 <b>docketed in the DIAMS system?</b></p> <p>12 A. When Mr. Sharinn joined our firm</p> <p>13 and when one or more of his clients</p> <p>14 transferred matters to us, which may have</p> <p>15 occurred then or thereafter, paralegals</p> <p>16 went through those files to see which of</p> <p>17 those relate to patent prosecution matters,</p> <p>18 for example, and took that information and</p> <p>19 entered it into the computerized docketing</p> <p>20 system.</p> <p>21 <b>Q. So you personally don't know</b></p> <p>22 <b>whether or not Mr. Sharinn directed that</b></p> <p>23 <b>the '160 Patent be docketed in GT's</b></p> <p>24 <b>docketing system?</b></p> <p>25 A. It's my understanding that</p>

26 (Pages 98 to 101)

<p style="text-align: right;">Page 98</p> <p>1 P. Sutton</p> <p>2 Mr. Sharinn did give that information and</p> <p>3 those files to our paralegals to do just</p> <p>4 that.</p> <p>5 <b>Q. With the instruction to do just</b></p> <p>6 <b>that, in other words, here are the files,</b></p> <p>7 <b>please docket it, is that what you</b></p> <p>8 <b>understand occurred?</b></p> <p>9 A. By his simply giving the files to</p> <p>10 the paralegals, it's automatic that they</p> <p>11 would docket it so that he didn't even have</p> <p>12 to give that instruction.</p> <p>13 <b>Q. Okay.</b></p> <p>14 A. If he gave that instruction, that</p> <p>15 would just be belt and suspenders.</p> <p>16 <b>Q. Okay.</b></p> <p>17 <b>But you personally don't know</b></p> <p>18 <b>whether he took that belt-and-suspenders</b></p> <p>19 <b>approach here?</b></p> <p>20 A. I'm fairly certain that he did.</p> <p>21 <b>Q. That he did specifically ask?</b></p> <p>22 A. That he did, in fact, ask our</p> <p>23 paralegals to go through the files and that</p> <p>24 were transferred and to seek out anything</p> <p>25 that required entry into the computerized</p>	<p style="text-align: right;">Page 100</p> <p>1 P. Sutton</p> <p>2 relevant files were handled properly.</p> <p>3 I did not do that alone. I did</p> <p>4 that together with Todd Sharinn because it</p> <p>5 was his relationship and his client.</p> <p>6 <b>Q. Understood.</b></p> <p>7 <b>You said that Dr. Covan agreed to</b></p> <p>8 <b>give us, Greenberg Traurig, this</b></p> <p>9 <b>responsibility.</b></p> <p>10 <b>What responsibility are you</b></p> <p>11 <b>referring to, the responsibility for</b></p> <p>12 <b>docketing the deadlines for the '160</b></p> <p>13 <b>Patent?</b></p> <p>14 A. He gave us Power of Attorney to</p> <p>15 handle the '160 Patent and its enforcement</p> <p>16 against Medtronic, both.</p> <p>17 <b>Q. Well, when you take on a -- okay,</b></p> <p>18 <b>you said both, it sounds like there are two</b></p> <p>19 <b>pieces of the responsibility, enforcement</b></p> <p>20 <b>and --</b></p> <p>21 A. No, there are no two pieces, no.</p> <p>22 <b>Q. Okay.</b></p> <p>23 A. It's all part of the same ball of</p> <p>24 wax. If you're enforcing a patent against</p> <p>25 another party or seeking to license them or</p>
<p style="text-align: right;">Page 99</p> <p>1 P. Sutton</p> <p>2 docketing system.</p> <p>3 <b>Q. And upon what information do you</b></p> <p>4 <b>base your statement that you're fairly</b></p> <p>5 <b>certain that that occurred?</b></p> <p>6 A. Well, I actually personally</p> <p>7 played a role in convincing Dr. Steve Covan</p> <p>8 to turn over to our firm the matter of</p> <p>9 handling the '160 Patent and its</p> <p>10 enforcement against Medtronic, and</p> <p>11 personally met with Steve Covan,</p> <p>12 communicated with him by telephone,</p> <p>13 personally negotiated with one or more</p> <p>14 representatives of Medtronic to try to</p> <p>15 resolve it short of litigation, because</p> <p>16 Dr. Covan had a relationship with Medtronic</p> <p>17 already existing.</p> <p>18 I personally visited Dr. Covan, I</p> <p>19 believe it was on a sunny weekend, and</p> <p>20 frankly, in an effort to convince him that</p> <p>21 we would be the best firm to handle this</p> <p>22 matter and thereafter when he agreed to</p> <p>23 give us this responsibility, I played a</p> <p>24 role in seeing that the matters were broad,</p> <p>25 that the matter was brought in, that the</p>	<p style="text-align: right;">Page 101</p> <p>1 P. Sutton</p> <p>2 negotiate some kind of a deal with them,</p> <p>3 you are handling as part of that the patent</p> <p>4 in the case of the '160 Patent here, and</p> <p>5 they did enter into our computerized</p> <p>6 docketing system for the period that we</p> <p>7 were representing Quickie prior to our</p> <p>8 having our power revoked, we did have it on</p> <p>9 our system the deadlines for the</p> <p>10 maintenance fees that would have been due,</p> <p>11 and that we would have paid had our Power</p> <p>12 of Attorney not been revoked, or that,</p> <p>13 frankly, Quickie could pay directly, or</p> <p>14 Allan Fell could pay directly, or Mark</p> <p>15 Evens, on learning that he was going to be</p> <p>16 representing Quickie in connection with</p> <p>17 this patent, any one or more of those</p> <p>18 parties at least could have timely taken</p> <p>19 care of the maintenance fee well prior to</p> <p>20 the deadline and even thereafter, had a</p> <p>21 proper petition been filed by Maier &amp;</p> <p>22 Maier, that patent would have been, as</p> <p>23 originally granted, would have been</p> <p>24 reinstated.</p> <p>25 Of course, as the patent was</p>



27 (Pages 102 to 105)

<p style="text-align: right;">Page 102</p> <p>1 P. Sutton</p> <p>2 originally granted should not have been</p> <p>3 granted in that form because only two of</p> <p>4 the 34 claims have been canceled from that</p> <p>5 patent as a result of the re-examination</p> <p>6 proceeding.</p> <p>7 MR. LODEN: Objection.</p> <p>8 Nonresponsive.</p> <p>9 (Whereupon, a luncheon recess was</p> <p>10 taken at 11:58 a.m.)</p> <p>11</p> <p>12 * * *</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 104</p> <p>1 P. Sutton</p> <p>2 so our practice -- first of all, I should</p> <p>3 say that our computerized docketing system</p> <p>4 is one that we operate and keep in the</p> <p>5 ordinary course of business as part of our</p> <p>6 practice, our Intellectual property</p> <p>7 practice, and I should also add that it is</p> <p>8 comparable and does the same functions as</p> <p>9 the one I brought over from Thelen to</p> <p>10 Greenberg Traurig.</p> <p>11 We want a person whose name is</p> <p>12 associated with each record to be</p> <p>13 reachable, so if we need information we can</p> <p>14 go to that person, and that's why her</p> <p>15 initials are on there.</p> <p>16 <b>Q. So then was it this Latisha</b></p> <p>17 <b>somebody who actually created the record</b></p> <p>18 <b>for the '160 Patent?</b></p> <p>19 A. I don't know if it was either her</p> <p>20 or someone else. There are other</p> <p>21 paralegals who worked during her tenure</p> <p>22 there. So it could have been somebody</p> <p>23 else. I just don't know.</p> <p>24 <b>Q. If you wanted to find out who it</b></p> <p>25 <b>actually was who created the entries, is</b></p>
<p style="text-align: right;">Page 103</p> <p>1 P. Sutton</p> <p>2 AFTERNOON SESSION</p> <p>3 (Time noted: 12:55 p.m.)</p> <p>4</p> <p>5 A. Before going on the record, I'll</p> <p>6 just share with you that during the lunch</p> <p>7 break I did the following in an effort to</p> <p>8 get the information as to Exhibit 3 --</p> <p>9 MR. CHU: Just to let you know</p> <p>10 you're on the record.</p> <p>11 THE WITNESS: Yes.</p> <p>12 A. Firstly, I called Phyllis Cordes,</p> <p>13 who I believe are the initials at the top.</p> <p>14 She's not, as it turns out, familiar with</p> <p>15 this data sheet. Her initials were put</p> <p>16 there after her predecessor Latisha, I</p> <p>17 forget her name, left our firm. I forget</p> <p>18 Latisha's last name. We can get that for</p> <p>19 you if needed.</p> <p>20 <b>Q. Let me stop you there.</b></p> <p>21 <b>Who asked or who directed that</b></p> <p>22 <b>Phyllis' initials be placed here?</b></p> <p>23 A. We normally have some person,</p> <p>24 some paralegal responsible for every</p> <p>25 record, and so, who is with the firm, and</p>	<p style="text-align: right;">Page 105</p> <p>1 P. Sutton</p> <p>2 <b>there a way to do that?</b></p> <p>3 A. Well, to be honest with you,</p> <p>4 that's why I called Phyllis Cordes, and I</p> <p>5 could not get that information.</p> <p>6 <b>Q. She just didn't have it or didn't</b></p> <p>7 <b>have it at her fingertips?</b></p> <p>8 A. I'll explain why. Phyllis works</p> <p>9 with DIAMS. The record that is reflected</p> <p>10 by Exhibit 3 is a PATS, one generated by</p> <p>11 the PATS system, that does the same thing</p> <p>12 as DIAMS, but it's from a different</p> <p>13 software vendor and it accomplishes the</p> <p>14 same functions, and I was able to learn --</p> <p>15 <b>Q. Let me make sure I understand.</b></p> <p>16 A. Why don't I complete my thought.</p> <p>17 <b>Q. Go ahead, go ahead.</b></p> <p>18 A. I was able, once I realized that</p> <p>19 this is the PATS, Exhibit 3 is a report</p> <p>20 generated by the PATS system, I realized</p> <p>21 that that field, PAT number sign, in the</p> <p>22 upper left, is the number that PATS, that's</p> <p>23 PATS's number that they assign to us. So</p> <p>24 that's a PATS number.</p> <p>25 When I found out that it's a PATS</p>

28 (Pages 106 to 109)

<p style="text-align: right;">Page 106</p> <p>1 P. Sutton</p> <p>2 record, I then went to the interrogatory</p> <p>3 responses that I signed on August 13, 2007</p> <p>4 and made reference to the response to</p> <p>5 interrogatory number 8 where it is</p> <p>6 confirmed that it was during the year 2000</p> <p>7 that we made the transition from PATS to</p> <p>8 DIAMS.</p> <p>9 What we did was we ran both</p> <p>10 systems with an overlap, duplicated the</p> <p>11 effort so that we'd know that the DIAMS</p> <p>12 system was reliable and working properly</p> <p>13 before we stopped using the PATS.</p> <p>14 So there was an overlap period,</p> <p>15 and during that time when we entered data</p> <p>16 from the PATS system to the DIAMS system,</p> <p>17 we recorded, we made an entry in the PATS</p> <p>18 system that reflected the date on which we</p> <p>19 were making those transfers, because</p> <p>20 garbage in, garbage out, you want to be</p> <p>21 careful that -- you can't just do an</p> <p>22 automatic transfer.</p> <p>23 So if you look at the date</p> <p>24 modified at the top, July 10, 2003, it's my</p> <p>25 best recollection that that would be the</p>	<p style="text-align: right;">Page 108</p> <p>1 P. Sutton</p> <p>2 like to correct that. I believe that the</p> <p>3 printout of Exhibit 3 is actually a PATS</p> <p>4 report, PATS-generated report.</p> <p>5 <b>Q. When you say PATS-generated</b></p> <p>6 <b>report, is this a report that is generated</b></p> <p>7 <b>on a regular basis, or does someone have to</b></p> <p>8 <b>actually go in and ask for this report to</b></p> <p>9 <b>be generated?</b></p> <p>10 A. One goes in and asks for this.</p> <p>11 For example, if we're transferring a case</p> <p>12 to another law firm and we want them to</p> <p>13 have information, we can generate this</p> <p>14 report and send it along with the file so</p> <p>15 that if they're not patent attorneys, for</p> <p>16 example, or if it's the client, they'll</p> <p>17 have something to give to their new</p> <p>18 counsel.</p> <p>19 <b>Q. Do you know if that occurred with</b></p> <p>20 <b>respect to the transfer to Thelen in this</b></p> <p>21 <b>instance?</b></p> <p>22 A. It's my understanding that that</p> <p>23 would have occurred. I don't, I didn't</p> <p>24 personally put the page in the file, but</p> <p>25 it's my understanding that -- first of all,</p>
<p style="text-align: right;">Page 107</p> <p>1 P. Sutton</p> <p>2 date that reflected the transfer of data</p> <p>3 from the PATS system to the DIAMS system,</p> <p>4 and even though we no longer represented</p> <p>5 Quickie, we keep their data in our system,</p> <p>6 and currently it's in the DIAMS system, but</p> <p>7 prior to that, it was in the PATS system.</p> <p>8 So that -- what I've tried to do</p> <p>9 is give you the identification of that P</p> <p>10 number next to PATS number sign. The</p> <p>11 reason for that date is the date 7/10/2003</p> <p>12 does not reflect legal services or</p> <p>13 activity, but more the transfer not to</p> <p>14 another firm, but from one system within</p> <p>15 our firm, one software vendor system to</p> <p>16 another, that accomplishes all of the same</p> <p>17 end results.</p> <p>18 <b>Q. Okay.</b></p> <p>19 A. Sorry for the lengthy statement.</p> <p>20 <b>Q. I made a note earlier in your</b></p> <p>21 <b>testimony this morning. I believe you said</b></p> <p>22 <b>that the Exhibit 3 was actually a DIAMS</b></p> <p>23 <b>printout. It sounds like you were mistaken</b></p> <p>24 <b>in that respect.</b></p> <p>25 A. I believe if I said that, I'd</p>	<p style="text-align: right;">Page 109</p> <p>1 P. Sutton</p> <p>2 Mark Evens had all of the relevant</p> <p>3 information as of April 11, 2002, so he</p> <p>4 didn't even need anything from us because</p> <p>5 it's all a matter of public record and had</p> <p>6 the number and could access that online.</p> <p>7 I just also, just for the</p> <p>8 purposes of completing the information I'm</p> <p>9 giving you, you asked what else would</p> <p>10 appear under the response field. One</p> <p>11 possibility would be if we were attorneys</p> <p>12 of record would be a date of a filing of a</p> <p>13 response, that would be one possibility.</p> <p>14 Another would be the one that you</p> <p>15 see here where our power was revoked.</p> <p>16 Another would be the date on</p> <p>17 which a client instructed us not to pursue</p> <p>18 this patent or patent application any</p> <p>19 longer, either for financial reasons or for</p> <p>20 some other reason, and what we would do is</p> <p>21 put the date of that instruction in that</p> <p>22 field.</p> <p>23 There would be a note on the</p> <p>24 bottom where it says, you know, transfer to</p> <p>25 another firm, it would say client</p>



29 (Pages 110 to 113)

<p style="text-align: right;">Page 110</p> <p>1 P. Sutton</p> <p>2 Instructed us not to spend anymore money on</p> <p>3 this case or whatever, but it would reflect</p> <p>4 a note and the date of those instructions</p> <p>5 to take no further action and to incur no</p> <p>6 further fees.</p> <p>7 <b>Q. You said earlier that it's your</b></p> <p>8 <b>understanding that the document in Exhibit</b></p> <p>9 <b>3 was transferred to Thelen.</b></p> <p>10 A. I don't know that of my own</p> <p>11 personal knowledge, but if the new client</p> <p>12 or the new attorney requests that, we</p> <p>13 provide that.</p> <p>14 If the new attorney is a patent</p> <p>15 attorney and already has the information,</p> <p>16 they actually don't need that information</p> <p>17 because they already have it, as in the</p> <p>18 case of Thelen.</p> <p>19 <b>Q. Then let me ask: My question</b></p> <p>20 <b>earlier was do you know if that occurred</b></p> <p>21 <b>with respect to the transfer to Thelen in</b></p> <p>22 <b>this instance, and your answer was it's my</b></p> <p>23 <b>understanding that that would have</b></p> <p>24 <b>occurred.</b></p> <p>25 <b>So what do you base that</b></p>	<p style="text-align: right;">Page 112</p> <p>1 P. Sutton</p> <p>2 category that your question relates to --</p> <p>3 <b>Q. Sure, sure. Well, I don't even</b></p> <p>4 <b>need to do that. Let me ask a different</b></p> <p>5 <b>question.</b></p> <p>6 <b>So as the 30(b)(6) corporate</b></p> <p>7 <b>representative for Greenberg, are you</b></p> <p>8 <b>saying then that it's Greenberg's standards</b></p> <p>9 <b>that Greenberg does not transfer the patent</b></p> <p>10 <b>record sheet for a patent to new counsel</b></p> <p>11 <b>unless they're specifically requesting that</b></p> <p>12 <b>information to be transferred?</b></p> <p>13 A. That is not my testimony.</p> <p>14 <b>Q. Okay.</b></p> <p>15 <b>So -- well, you seemed to say</b></p> <p>16 <b>earlier that you would have expected Thelen</b></p> <p>17 <b>to ask for this information if they had</b></p> <p>18 <b>wanted it.</b></p> <p>19 A. That's not my testimony.</p> <p>20 <b>Q. Okay.</b></p> <p>21 <b>Well, then, how did I get that</b></p> <p>22 <b>wrong?</b></p> <p>23 A. I don't know.</p> <p>24 <b>Q. Okay.</b></p> <p>25 <b>Well, was this information from</b></p>
<p style="text-align: right;">Page 111</p> <p>1 P. Sutton</p> <p>2 <b>understanding on?</b></p> <p>3 A. If they requested that, that</p> <p>4 would have occurred. I don't see any</p> <p>5 reason for their having requested that. I</p> <p>6 left that phrase out.</p> <p>7 If Thelen requested it, we would</p> <p>8 provide that, but there would be no reason</p> <p>9 for them to request it.</p> <p>10 <b>Q. So is it your testimony then that</b></p> <p>11 <b>only if the new attorney taking over the</b></p> <p>12 <b>matter requests for a listing of the</b></p> <p>13 <b>docketed deadlines does Greenberg then have</b></p> <p>14 <b>an obligation to provide those deadlines?</b></p> <p>15 MR. CHU: Objection.</p> <p>16 A. You're asking me for a legal</p> <p>17 opinion, and I don't think that that's</p> <p>18 appropriate.</p> <p>19 <b>Q. Well, you're an attorney, aren't</b></p> <p>20 <b>you?</b></p> <p>21 A. I am, but I'm not here as an --</p> <p>22 I'm not here to give you legal opinions.</p> <p>23 I'm here as a 30(b)(6) witness.</p> <p>24 <b>Q. Okay.</b></p> <p>25 A. If you could point to the</p>	<p style="text-align: right;">Page 113</p> <p>1 P. Sutton</p> <p>2 <b>the Exhibit 3 transferred to Thelen?</b></p> <p>3 A. Yes, it was transferred to them</p> <p>4 on April 11, 2002 in the first instance and</p> <p>5 to others including Alan Fell and to the</p> <p>6 client and to, and via Pepe &amp; Hazard so</p> <p>7 that the client and its counsel, other than</p> <p>8 GT, had this information regarding the due</p> <p>9 dates on the maintenance fees prior to the</p> <p>10 formal revocation of GT's representation on</p> <p>11 this case and as early as April 11, 2002.</p> <p>12 <b>Q. Well, on April --</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. Move to strike. Nonresponsive.</b></p> <p>15 <b>On April 11, 2002, Greenberg was</b></p> <p>16 <b>still responsible for monitoring the</b></p> <p>17 <b>maintenance fee deadlines on the '160</b></p> <p>18 <b>Patent, correct?</b></p> <p>19 A. I didn't dispute that. What I</p> <p>20 stated was that we communicated in a letter</p> <p>21 to Mark Evens from Todd Sharinn the</p> <p>22 information that provided him enough to put</p> <p>23 into the Thelen system that I set up all of</p> <p>24 the maintenance fee deadlines so that</p> <p>25 Thelen had the opportunity as of April 11,</p>

30 (Pages 114 to 117)

<p style="text-align: right;">Page 114</p> <p>1 P. Sutton</p> <p>2 2002 to have that as part of their system.</p> <p>3 <b>Q. But you as you sit here today,</b></p> <p>4 <b>you don't know whether this patent record</b></p> <p>5 <b>sheet, Exhibit 3, whether this actual</b></p> <p>6 <b>printout was included in the documents</b></p> <p>7 <b>transferred to Thelen?</b></p> <p>8 A. I can't -- I don't know that as</p> <p>9 I'm sitting here today without checking</p> <p>10 further.</p> <p>11 <b>Q. But presumably, if it was</b></p> <p>12 <b>included, then it would be found in the</b></p> <p>13 <b>files that Thelen has?</b></p> <p>14 A. That assumes that Thelen, that it</p> <p>15 was and that Thelen kept that record, but</p> <p>16 it does not address the fact that Thelen</p> <p>17 already had the information so that it did</p> <p>18 not need that information.</p> <p>19 <b>Q. When the information was provided</b></p> <p>20 <b>as you say to Thelen in April 2002, did</b></p> <p>21 <b>anyone tell Thelen that they were now</b></p> <p>22 <b>expected to monitor deadlines on the</b></p> <p>23 <b>patent?</b></p> <p>24 A. If we at Thelen -- it was my</p> <p>25 practice that if we received the notice</p>	<p style="text-align: right;">Page 116</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>Thelen that they were now expected to</b></p> <p>3 <b>monitor deadlines on the patent?</b></p> <p>4 A. It was not necessary to tell</p> <p>5 them --</p> <p>6 <b>Q. So the answer is no, no one told</b></p> <p>7 <b>them?</b></p> <p>8 A. I don't know that that's the case</p> <p>9 at all.</p> <p>10 <b>Q. Did you, yourself, tell them?</b></p> <p>11 A. I don't believe I myself told</p> <p>12 them, but I --</p> <p>13 <b>Q. Do you know if --</b></p> <p>14 A. Excuse me, let me finish, please.</p> <p>15 Thelen, on being given the</p> <p>16 information on April 11, 2002 was given</p> <p>17 that information so that they had the</p> <p>18 ability to enter that into their system and</p> <p>19 to monitor that and to keep their relative</p> <p>20 informed as to what was due and the</p> <p>21 deadlines.</p> <p>22 MR. SCOTT: Move to strike the</p> <p>23 last part.</p> <p>24 BY MR. LODEN:</p> <p>25 <b>Q. But again, in April 2002,</b></p>
<p style="text-align: right;">Page 115</p> <p>1 P. Sutton</p> <p>2 that Todd Sharinn gave Mark Evens, that we</p> <p>3 would put that into the computerized</p> <p>4 docketing system at Thelen so that in</p> <p>5 anticipation of our relative transferring</p> <p>6 the business from GT to Thelen we'd have</p> <p>7 that information in our system.</p> <p>8 Also, frankly, if GT, if things</p> <p>9 were reversed, we would have paid that</p> <p>10 maintenance fee if the shoe were on the</p> <p>11 other foot.</p> <p>12 In other words, Thelen could have</p> <p>13 had it in its computerized documents</p> <p>14 system, they could have paid the</p> <p>15 maintenance fee. If there was a duplicate</p> <p>16 payment, they would have been refunded for</p> <p>17 duplicate -- and so Thelen chose not to</p> <p>18 take responsibility for what it knew it was</p> <p>19 going to have transferred to it.</p> <p>20 MR. LODEN: Objection.</p> <p>21 Nonresponsive. Move to strike.</p> <p>22 BY MR. LODEN:</p> <p>23 <b>Q. My question was: When the</b></p> <p>24 <b>information was provided as you say to</b></p> <p>25 <b>Thelen in April 2002, did anyone tell</b></p>	<p style="text-align: right;">Page 117</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>Greenberg was still responsible for</b></p> <p>3 <b>monitoring the maintenance fee deadlines on</b></p> <p>4 <b>the patent, right, that's what you said</b></p> <p>5 <b>earlier?</b></p> <p>6 MR. CHU: Objection.</p> <p>7 A. Our power had not been revoked as</p> <p>8 of April 11, 2002.</p> <p>9 <b>Q. So is it then your testimony that</b></p> <p>10 <b>it's standard procedure in the system that</b></p> <p>11 <b>you set up at Thelen that that system would</b></p> <p>12 <b>include deadlines for payment of fees for</b></p> <p>13 <b>patents for which Thelen was not</b></p> <p>14 <b>responsible at the time?</b></p> <p>15 A. At Thelen, it was my practice</p> <p>16 that where we understood that there was</p> <p>17 either a likelihood or a certainty that one</p> <p>18 or more matters were to be transferred to</p> <p>19 our firm, that on receipt of information</p> <p>20 having to do with patents, such as the '160</p> <p>21 Patent and the number, for example, by</p> <p>22 virtue of the April 11, 2002 letter to Mark</p> <p>23 Evens there, it was our practice to enter</p> <p>24 that information and any deadlines</p> <p>25 associated with that patent into the</p>

31 (Pages 118 to 121)

<p style="text-align: right;">Page 118</p> <p>1 P. Sutton</p> <p>2 computerized docketing system in force and</p> <p>3 operating at Thelen.</p> <p>4 <b>Q. Why? If you're not responsible,</b></p> <p>5 <b>why enter the deadlines?</b></p> <p>6 MR. CHU: Objection.</p> <p>7 A. I just explained why. If we had</p> <p>8 reason to believe that a relative of ours,</p> <p>9 namely a relative of Mark Evens is going to</p> <p>10 be transferring matters relating to the</p> <p>11 '160 Patent to us, even if it's not a</p> <p>12 certainty, we would, it was my practice</p> <p>13 back then to enter that information into</p> <p>14 the system so that the very matter that</p> <p>15 occurred would not occur.</p> <p>16 In other words, if it was in the</p> <p>17 system and if it was monitored as it was</p> <p>18 our practice when I was at Thelen, there</p> <p>19 would have been, the maintenance fee would</p> <p>20 have been paid by them. So there would be</p> <p>21 no abandonment.</p> <p>22 <b>Q. And is that still your practice</b></p> <p>23 <b>today, that even if you at Greenberg don't</b></p> <p>24 <b>have responsibility for maintenance fee</b></p> <p>25 <b>deadlines on a particular patent, if you</b></p>	<p style="text-align: right;">Page 120</p> <p>1 P. Sutton</p> <p>2 <b>in place to make sure nothing falls between</b></p> <p>3 <b>the cracks?</b></p> <p>4 MR. CHU: I object to that.</p> <p>5 A. It's actually very simple. If in</p> <p>6 fact when the matter is transferred to</p> <p>7 us --</p> <p>8 <b>Q. So we're talking about</b></p> <p>9 <b>matters transferred to --</b></p> <p>10 A. You're interfering with my --</p> <p>11 <b>Q. No, I'm --</b></p> <p>12 A. You're interrupting my answer.</p> <p>13 <b>Q. Let me ask a more clear question</b></p> <p>14 <b>then.</b></p> <p>15 A. Okay.</p> <p>16 <b>Q. What systems does Greenberg have</b></p> <p>17 <b>in place to ensure nothing falls between</b></p> <p>18 <b>the cracks when files are transferred to</b></p> <p>19 <b>Greenberg?</b></p> <p>20 MR. SCOTT: To Greenberg?</p> <p>21 MR. LODEN: Yes, and then we'll</p> <p>22 talk about from afterwards.</p> <p>23 BY MR. LODEN:</p> <p>24 <b>Q. Let's talk about only to</b></p> <p>25 <b>Greenberg.</b></p>
<p style="text-align: right;">Page 119</p> <p>1 P. Sutton</p> <p>2 <b>think you might have that responsibility in</b></p> <p>3 <b>the future, you'll go ahead and docket</b></p> <p>4 <b>them?</b></p> <p>5 A. If there is, if I feel that there</p> <p>6 is a responsibility or a likelihood that</p> <p>7 we're going to be taking over matters that</p> <p>8 might be transferred to us or whether</p> <p>9 there's a good chance or a moderate chance</p> <p>10 that that's going to occur, it is my</p> <p>11 practice to identify or have identified for</p> <p>12 us, much like the April 11, 2002 letter, it</p> <p>13 is my practice to enter into our system</p> <p>14 matters that we have not been given a Power</p> <p>15 of Attorney yet so that we can make sure</p> <p>16 that nothing falls between the cracks.</p> <p>17 It was my practice at Thelen,</p> <p>18 it's my practice today to do that.</p> <p>19 Obviously we can't charge for that.</p> <p>20 <b>Q. So what do you do then at</b></p> <p>21 <b>Greenberg Traurig to make sure that, as you</b></p> <p>22 <b>put it, nothing falls between the cracks</b></p> <p>23 <b>when patents are being transferred to or</b></p> <p>24 <b>from Greenberg Traurig?</b></p> <p>25 <b>I mean, what systems do you have</b></p>	<p style="text-align: right;">Page 121</p> <p>1 P. Sutton</p> <p>2 A. If we have, as I've given the</p> <p>3 example, reason to believe that a file will</p> <p>4 be transferred to us, and according to my</p> <p>5 practice I enter the information into our</p> <p>6 system so that we can monitor that, if the</p> <p>7 matter is transferred to us formally and we</p> <p>8 are given a Power of Attorney, that</p> <p>9 information is already in the system but we</p> <p>10 have the double-check that when the</p> <p>11 physical files are transferred to us, when</p> <p>12 the paralegal goes to enter the data, it's</p> <p>13 already there and you have that</p> <p>14 double-check.</p> <p>15 <b>Q. Okay.</b></p> <p>16 <b>So then let's talk about</b></p> <p>17 <b>procedures to make sure nothing falls</b></p> <p>18 <b>through the cracks when files are</b></p> <p>19 <b>transferred from Greenberg, what happens</b></p> <p>20 <b>then?</b></p> <p>21 A. Okay. Let's take the specifics.</p> <p>22 When I was at Thelen, it was the</p> <p>23 practice to do the exact same thing so that</p> <p>24 when Todd Sharinn on April 11, 2002 gave</p> <p>25 Mark Evens the identification of the patent</p>

32 (Pages 122 to 125)

<p style="text-align: right;">Page 122</p> <p>1 P. Sutton 2 number, the 160, it was my practice then, 3 and I assume was still the practice at 4 Thelen, to enter into their computerized 5 docketing system the '160 Patent and its 6 maintenance fee deadlines so that it could, 7 as those dates became due, pay those 8 maintenance fees regardless of whether or 9 not it got further information. 10 In other words, it was my 11 practice at Thelen, it was -- it is my 12 practice at Greenberg Traurig. I'm 13 surprised, frankly, that it was not done at 14 Thelen, because that was our practice when 15 I was there. 16 <b>Q. So this April 11, 2002 letter,</b> 17 <b>which, frankly, I'll be honest with you,</b> 18 <b>Mr. Sutton, I don't have included in my</b> 19 <b>list of documents to discuss today, it</b> 20 <b>sounds like it's a critical part of your</b> 21 <b>testimony, at least with respect to the</b> 22 <b>matter that we're discussing today, so I'll</b> 23 <b>ask you: Do you have a copy of it?</b> 24 A. I don't. 25 <b>Q. Does your counsel have a copy of</b></p>	<p style="text-align: right;">Page 124</p> <p>1 P. Sutton 2 to enter that into their system without 3 even having to go online. 4 They have all of the information 5 available to them between the first and the 6 second sheet of Exhibit 5. 7 MR. LODEN: Objection. 8 Nonresponsive. Move to strike. 9 BY MR. LODEN: 10 <b>Q. Mr. Sutton, why was Todd Sharinn</b> 11 <b>sending this letter to Mark Evens?</b> 12 A. It appears that Mark Evens 13 requested this information perhaps to enter 14 the information into the computerized 15 docketing system of Thelen. 16 <b>Q. Well, you say it appears. Do you</b> 17 <b>or do you not know?</b> 18 A. Just from looking at it, "It was 19 a pleasure speaking to you today" -- see, 20 I'm familiar from my conversations with 21 Steve Colvin as to what was going on in 22 terms of during this period where he wanted 23 Mark Evens to benefit from this entire 24 effort of handling the '160 Patent and the 25 action against Medtronic so that -- and I</p>
<p style="text-align: right;">Page 123</p> <p>1 P. Sutton 2 it? 3 MR. CHU: Let's just go off the 4 record. 5 (Recess taken from 1:19 p.m. to 6 1:22 p.m.) 7 (Exhibit 5, Correspondence dated 8 4/11/02, marked for identification, as 9 of this date.) 10 BY MR. LODEN: 11 <b>Q. Mr. Sutton, the reporter has just</b> 12 <b>handed you what's been marked as Exhibit 5.</b> 13 A. Yes. 14 <b>Q. Is this the April 11, 2002</b> 15 <b>correspondence that you were referring to?</b> 16 A. What I've been referring to in my 17 testimony regarding a Todd Sharinn April 18 11, 2002 letter to Mark Evens includes two 19 sheets, the letter which appears to respond 20 to a request for Mark Evens for the patent 21 number, but in addition, attached to the 22 letter itself is a photocopy of the 23 Greenberg Traurig physical file cover sheet 24 with information on there, further 25 information on there, that permits Thelen</p>	<p style="text-align: right;">Page 125</p> <p>1 P. Sutton 2 believe that Mark Evens telephoned me 3 indicating that he was going to be involved 4 and that we should not be offended by that, 5 and I welcomed him to have information such 6 as this so that he could give Steve 7 independent advice and counseling. 8 <b>Q. Well, in that phone call, did</b> 9 <b>Mr. Evens tell you that he wanted the file</b> 10 <b>wrapper for the '160 Patent so he could</b> 11 <b>docket the deadlines in the Thelen system?</b> 12 A. Not in his conversation with me, 13 no. 14 <b>Q. And were you party to the</b> 15 <b>conversation between Mr. Evens and</b> 16 <b>Mr. Sharinn concerning the file wrapper?</b> 17 A. It's possible I was. I don't 18 have a specific recollection of whether I 19 was in the room when Todd Sharinn took the 20 call. 21 <b>Q. So when you say that it appears</b> 22 <b>that Mark Evens requested this information</b> 23 <b>perhaps to enter the information into the</b> 24 <b>computerized docketing system of Thelen,</b> 25 <b>you, yourself, personally have no knowledge</b></p>

33 (Pages 126 to 129)

<p style="text-align: right;">Page 126</p> <p>1 <b>P. Sutton</b>  2 <b>of Mr. Evens actually making that request</b>  3 <b>of Mr. Sharinn, do you?</b>  4 A. The attachment of the photocopy  5 of the outside of our physical file  6 confirms to me that we would have no reason  7 to provide that but for a request of that  8 type from Mark.  9 <b>Q. But you have no personal</b>  10 <b>knowledge of Mr. Evens actually saying</b>  11 <b>Todd, send me the file wrapper so I can</b>  12 <b>docket the maintenance fee deadlines?</b>  13 <b>You're not testifying from</b>  14 <b>personal knowledge about that conversation</b>  15 <b>occurring, are you?</b>  16 A. I cannot testify today to the  17 exact words that Mark Evens used during his  18 telephone conversations with us.  19 <b>Q. So then the corollary of that</b>  20 <b>then is you're speculating, aren't you, as</b>  21 <b>to what was said in that conversation?</b>  22 MR. CHU: Objection.  23 A. I don't believe so. Again, for  24 the reasons I've already put on the record,  25 I don't believe so. I refer you again to</p>	<p style="text-align: right;">Page 128</p> <p>1 P. Sutton  2 <b>Q. Your counsel just made my point.</b>  3 <b>You're speculating that anything is</b>  4 <b>possible as to why --</b>  5 A. No, that's not correct --  6 <b>Q. As to why he made that request,</b>  7 <b>isn't that correct, Mr. Sutton?</b>  8 A. No. Again, you've disregarded my  9 testimony.  10 The attachment to the first page  11 of Exhibit 5 is not the file history.  12 That's my point. It is the cover of the  13 physical file, not the file history, that  14 gives the data that will be used or would  15 be used by Thelen to enter the '160 Patent  16 within their computerized docketing system  17 for purposes of monitoring the deadlines  18 for paying the maintenance fees.  19 <b>Q. Turn to the second page.</b>  20 A. Yes.  21 <b>Q. What piece of information on the</b>  22 <b>second page of Exhibit 5 tells Thelen Reid</b>  23 <b>when the first maintenance fee is due on</b>  24 <b>the '160 Patent?</b>  25 A. Every bit of that information</p>
<p style="text-align: right;">Page 127</p> <p>1 P. Sutton  2 the attachment, the second sheet of Exhibit  3 5, which has to do with the prosecution  4 file history of the patent, not the  5 Medtronic litigation.  6 <b>Q. But isn't the prosecution of a</b>  7 <b>patent, isn't that a relevant item of</b>  8 <b>information when you're litigating the</b>  9 <b>validity of a patent or infringement of</b>  10 <b>that patent?</b>  11 A. During litigation involving a  12 patent, the filing history that led to that  13 patent is relevant in such a litigation.  14 <b>Q. So isn't it equally possible that</b>  15 <b>Mr. Evens said Todd, send me the file</b>  16 <b>wrapper since I'm now getting involved in</b>  17 <b>the litigation against Medtronic?</b>  18 MR. CHU: Objection.  19 MR. LODEN: What's the basis of  20 the objection?  21 MR. CHU: Because you're talking  22 about he said possible, not possible.  23 Anything is possible.  24 MR. LODEN: Thank you.  25 BY MR. LODEN:</p>	<p style="text-align: right;">Page 129</p> <p>1 P. Sutton  2 yields that -- for example, the patent  3 number, the date granted, the serial  4 number, the filing date, the title, the  5 group number, the assignee -- every piece  6 of information on the second page of  7 Exhibit 5 which has a Bates number QLLC  8 000029 provides Mark Evens and Thelen with  9 the information to enable it to put into  10 their computerized docketing system to be  11 able to monitor and take care of the  12 maintenance fees on the '160 Patent.  13 <b>Q. And is that the only purpose for</b>  14 <b>that information, or does that information</b>  15 <b>have other purposes as well?</b>  16 A. I don't understand your question.  17 <b>Q. Well, it seems like you're saying</b>  18 <b>the only possible reason that this</b>  19 <b>information could have been transferred to</b>  20 <b>Mark Evens was because he wanted to enter</b>  21 <b>it into the docketing system?</b>  22 A. Could you please show me where I  23 testified that way?  24 <b>Q. Well, are there other reasons --</b>  25 A. No, please show me where I have</p>

34 (Pages 130 to 133)

<p style="text-align: right;">Page 130</p> <p>1 P. Sutton</p> <p>2 said.</p> <p>3 <b>Q. No, I strike the question.</b></p> <p>4 A. Oh, you strike the question,</p> <p>5 fine, fine.</p> <p>6 <b>Q. Are there other possible reasons</b></p> <p>7 <b>why Mark Evens could have requested this</b></p> <p>8 <b>file wrapper for the '160 Patent?</b></p> <p>9 A. I think that just the first page</p> <p>10 alone would provide him with enough</p> <p>11 information where the patent number is</p> <p>12 listed, and it is my understanding that we</p> <p>13 provided him the second page as a courtesy</p> <p>14 for somebody who was my former partner and</p> <p>15 for somebody who was going to be counseling</p> <p>16 Quickie with regard to the '160 Patent and</p> <p>17 the Medtronic litigation.</p> <p>18 MR. LODEN: Objection. Move to</p> <p>19 strike. Nonresponsive. Move to</p> <p>20 strike.</p> <p>21 BY MR. LODEN:</p> <p>22 <b>Q. What are the possible reasons for</b></p> <p>23 <b>why Mark Evens could have requested the</b></p> <p>24 <b>file wrapper for the '160 Patent?</b></p> <p>25 A. Your question has to do with the</p>	<p style="text-align: right;">Page 132</p> <p>1 P. Sutton</p> <p>2 THE WITNESS: One second, please.</p> <p>3 A. I've been testifying under the</p> <p>4 30(b)(6) notice so far today. I'm not</p> <p>5 clear whether my testimony, you wish to now</p> <p>6 go to the other notice and that you wish</p> <p>7 testimony under the personal notice. I</p> <p>8 just want to confer with my counsel to find</p> <p>9 out what's appropriate.</p> <p>10 (Pause).</p> <p>11 BY MR. LODEN:</p> <p>12 <b>Q. For the record, the agreement</b></p> <p>13 <b>with your counsel, Mr. Sutton, was that you</b></p> <p>14 <b>would appear today in your personal</b></p> <p>15 <b>capacity pursuant to that deposition which</b></p> <p>16 <b>started at 9 a.m. this morning pursuant to</b></p> <p>17 <b>the deposition notice, as well as the</b></p> <p>18 <b>30(b)(6) designated corp rep for the</b></p> <p>19 <b>docketing clerk and records clerks. That</b></p> <p>20 <b>was the instruction that I got from your</b></p> <p>21 <b>counsel, that you would be appearing in</b></p> <p>22 <b>those --</b></p> <p>23 A. And how will you know which of my</p> <p>24 testimony is 30(b)(6) testimony that will</p> <p>25 be binding on Greenberg Traurig and which</p>
<p style="text-align: right;">Page 131</p> <p>1 P. Sutton</p> <p>2 operation of the mind of Mark Evens.</p> <p>3 <b>Q. Correct.</b></p> <p>4 A. Where on the deposition notice,</p> <p>5 could you show me the category that this</p> <p>6 relates to?</p> <p>7 MR. CHU: Object to the question.</p> <p>8 BY MR. LODEN:</p> <p>9 <b>Q. This relates to your personal</b></p> <p>10 <b>deposition notice. You are testifying that</b></p> <p>11 <b>Mark Evens specifically requested the file</b></p> <p>12 <b>wrapper so that he could docket the</b></p> <p>13 <b>deadlines for maintenance fees on the</b></p> <p>14 <b>patent in Thelen's system. That's your</b></p> <p>15 <b>testimony today.</b></p> <p>16 <b>My question is what are the other</b></p> <p>17 <b>possible reasons that Mr. Evens could have</b></p> <p>18 <b>requested that information?</b></p> <p>19 A. Can I ask my counsel a question</p> <p>20 regarding the 30(b)(6) versus individual</p> <p>21 deposition notices because I don't know</p> <p>22 which I'm testifying -- I've been</p> <p>23 testifying as a --</p> <p>24 MR. SCOTT: Let's just go off the</p> <p>25 record.</p>	<p style="text-align: right;">Page 133</p> <p>1 P. Sutton</p> <p>2 is my personal testimony?</p> <p>3 <b>Q. If we need to cross that issue, I</b></p> <p>4 <b>don't think we've reached that issue yet</b></p> <p>5 <b>today, but if we get to that point, we'll</b></p> <p>6 <b>clarify that.</b></p> <p>7 <b>The cover letter on Exhibit 5, it</b></p> <p>8 <b>says nothing about docketing maintenance</b></p> <p>9 <b>fees, does it?</b></p> <p>10 A. It references, the very first</p> <p>11 sentence says, "It was a pleasure speaking</p> <p>12 to you earlier today" --</p> <p>13 <b>Q. Let me stop you there.</b></p> <p>14 A. Please, let me finish.</p> <p>15 So that this first sentence</p> <p>16 incorporates by reference the conversation</p> <p>17 that I testified to earlier between Mark</p> <p>18 Evens and our firm.</p> <p>19 <b>Q. And that was a conversation to</b></p> <p>20 <b>which you said you had no recollection of</b></p> <p>21 <b>whether you participated or not?</b></p> <p>22 A. No, that's not what I said.</p> <p>23 <b>Q. Did you participate in that</b></p> <p>24 <b>conversation?</b></p> <p>25 A. Please, let me finish my answer.</p>



35 (Pages 134 to 137)

<p style="text-align: right;">Page 134</p> <p>1 P. Sutton</p> <p>2 I indicated two things. I</p> <p>3 indicated that I spoke with Mark Evens</p> <p>4 myself alone, and I indicated that I may</p> <p>5 have been a party to Mark Evens'</p> <p>6 conversations with Todd Sharinn. I don't</p> <p>7 recall right now whether I was in the room</p> <p>8 with Todd Sharinn. Our offices -- we're</p> <p>9 two offices apart, so I just don't recall</p> <p>10 that.</p> <p>11 But what I also testified earlier</p> <p>12 is that I do not recall the exact words</p> <p>13 that were used by Mark Evens during the</p> <p>14 conversations.</p> <p>15 <b>Q. So as you sit here today, in that</b></p> <p>16 <b>conversation, whether you were a party of</b></p> <p>17 <b>it or you heard it through the wall or you</b></p> <p>18 <b>weren't party to it at all, you don't know</b></p> <p>19 <b>if Mark said in this conversation Todd, I'd</b></p> <p>20 <b>like to get the file wrapper so I can</b></p> <p>21 <b>docket the fees? You don't know whether he</b></p> <p>22 <b>said that or not?</b></p> <p>23 A. The second page of Exhibit 5</p> <p>24 leads me to believe that he was interested</p> <p>25 in that information and may have requested</p>	<p style="text-align: right;">Page 136</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>patent at issue?</b></p> <p>3 A. Please tell me what you mean by</p> <p>4 file wrapper.</p> <p>5 <b>Q. Well, Todd Sharinn refers to the</b></p> <p>6 <b>file wrapper in Exhibit 5 and attaches this</b></p> <p>7 <b>sheet.</b></p> <p>8 A. I'm asking you what you mean by</p> <p>9 it.</p> <p>10 <b>Q. That's what I'm talking about,</b></p> <p>11 <b>file wrapper.</b></p> <p>12 A. I don't know what Todd Sharinn</p> <p>13 means. I do know that what is attached as</p> <p>14 constituting the second page of Exhibit 5</p> <p>15 is a photocopy of the cover of what people</p> <p>16 refer to as the file wrapper, which</p> <p>17 contains the file history.</p> <p>18 The reason I'm asking you that</p> <p>19 question is people often confuse file</p> <p>20 history with file wrapper, and I just want</p> <p>21 to understand if you're asking me a</p> <p>22 question to be answered under oath what you</p> <p>23 mean by it.</p> <p>24 <b>Q. Okay.</b></p> <p>25 <b>Well, the document that is</b></p>
<p style="text-align: right;">Page 135</p> <p>1 P. Sutton</p> <p>2 that information.</p> <p>3 <b>Q. But that's your conclusion. You</b></p> <p>4 <b>have no personal knowledge of him actually</b></p> <p>5 <b>being interested in that information,</b></p> <p>6 <b>correct?</b></p> <p>7 A. I've already answered that</p> <p>8 question.</p> <p>9 <b>Q. Would you answer it again,</b></p> <p>10 <b>please.</b></p> <p>11 THE WITNESS: Please read back my</p> <p>12 prior answer.</p> <p>13 (Whereupon, the requested portion</p> <p>14 was read back by the court reporter.)</p> <p>15 <b>Q. I don't think I've asked that</b></p> <p>16 <b>particular question.</b></p> <p>17 A. I think you have. I've already</p> <p>18 indicated that I don't recall his specific</p> <p>19 words, but taken -- if I'm looking at</p> <p>20 Exhibit 5, the second page, I believe I've</p> <p>21 given you my best recollection and the best</p> <p>22 information I have today.</p> <p>23 <b>Q. Have you ever, you, yourself,</b></p> <p>24 <b>ever litigated a patent infringement matter</b></p> <p>25 <b>without looking at the file wrapper for the</b></p>	<p style="text-align: right;">Page 137</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>attached as page 2 to Exhibit 5, that's a</b></p> <p>3 <b>copy of the file wrapper?</b></p> <p>4 A. It's my understanding --</p> <p>5 <b>Q. Did I get that right?</b></p> <p>6 A. It's my belief that it is a</p> <p>7 photocopy of the outside cover containing</p> <p>8 the file wrapper, the physical</p> <p>9 manila-colored 3-part file, physical file,</p> <p>10 that patent attorney, we as patent</p> <p>11 attorneys use to conclude, that includes</p> <p>12 the file history but also correspondence</p> <p>13 with the client, things that the Patent and</p> <p>14 Trademark Office doesn't see.</p> <p>15 I'm making that distinction just</p> <p>16 so we're clear with one another. I don't</p> <p>17 believe that the entire file wrapper</p> <p>18 accompanied the first page of Exhibit 5. I</p> <p>19 believe what Todd meant was the cover, a</p> <p>20 photocopy of the cover of the file wrapper,</p> <p>21 which is our physical file.</p> <p>22 <b>Q. Well, looking at page 1, he</b></p> <p>23 <b>doesn't say I enclose a copy of the cover</b></p> <p>24 <b>of the file wrapper, does he? He didn't</b></p> <p>25 <b>say that there, did he?</b></p>

36 (Pages 138 to 141)

<p style="text-align: right;">Page 138</p> <p>1 <b>P. Sutton</b></p> <p>2 A. I'm looking, it says what it</p> <p>3 says -- I'm looking at the second page and</p> <p>4 it is just that. I'm trying to share with</p> <p>5 you, and maybe you already know that the</p> <p>6 second page is a photocopy of the cover.</p> <p>7 You can even see the clip that holds the</p> <p>8 file wrapper together shown in the</p> <p>9 photocopy on the second page.</p> <p>10 <b>Q. You said that --</b></p> <p>11 MR. CHU: Excuse me for one</p> <p>12 second just so I don't interrupt while</p> <p>13 you have a question pending.</p> <p>14 (Counsel confers with witness).</p> <p>15 BY MR. LODEN:</p> <p>16 <b>Q. Would you like to go back on the</b></p> <p>17 <b>record and discuss what you and your</b></p> <p>18 <b>attorney just discussed?</b></p> <p>19 MR. CHU: Well, no, we wouldn't.</p> <p>20 BY MR. LODEN:</p> <p>21 <b>Q. Well, what would you --</b></p> <p>22 A. Would you like me to testify now</p> <p>23 as to discussions I've just had with my</p> <p>24 counsel regarding attorney-client</p> <p>25 privilege?</p>	<p style="text-align: right;">Page 140</p> <p>1 <b>P. Sutton</b></p> <p>2 A. Well, the letter, if you'll</p> <p>3 notice, says enclosure as plural.</p> <p>4 <b>Q. Exactly.</b></p> <p>5 A. So I don't know what that means.</p> <p>6 I don't know whether his secretary typed</p> <p>7 plural accurately or mistakenly. I just</p> <p>8 don't know.</p> <p>9 So it's possible that Todd sent</p> <p>10 the entire, all pages, but I don't know</p> <p>11 that. I do see that he did send the cover</p> <p>12 that contains a lot of critical</p> <p>13 information.</p> <p>14 <b>Q. Would you agree with me that as</b></p> <p>15 <b>between yourself and Todd Sharinn, that</b></p> <p>16 <b>Todd would be the best witness to testify</b></p> <p>17 <b>as to what he discussed with Mark Evens and</b></p> <p>18 <b>why this correspondence was being sent to</b></p> <p>19 <b>Mark Evens?</b></p> <p>20 A. Not necessarily, no, I don't</p> <p>21 agree.</p> <p>22 <b>Q. Why is that?</b></p> <p>23 A. You asked me what my belief is.</p> <p>24 I certainly have no doubt that Todd Sharinn</p> <p>25 can share information with you that will</p>
<p style="text-align: right;">Page 139</p> <p>1 P. Sutton</p> <p>2 <b>Q. No.</b></p> <p>3 A. Okay, then I have nothing to</p> <p>4 share with you with respect to --</p> <p>5 <b>Q. Well, my question, Mr. Sutton, is</b></p> <p>6 <b>you stated previously, "I believe what Todd</b></p> <p>7 <b>meant, even though we've established that's</b></p> <p>8 <b>not what he said, but I believe what Todd</b></p> <p>9 <b>meant was the cover, a photocopy of the</b></p> <p>10 <b>cover of the file wrapper."</b></p> <p>11 <b>What do you base that belief on?</b></p> <p>12 A. It's very simple. The file</p> <p>13 wrapper is a relatively thick physical file</p> <p>14 that contains dozens or hundreds of pages</p> <p>15 and is available to Mark Evens, if he knows</p> <p>16 the patent number from the first page, it's</p> <p>17 a matter of public record, you can order it</p> <p>18 or have access to it online.</p> <p>19 I don't believe that Todd sent</p> <p>20 the entire physical file, but look, maybe</p> <p>21 he did.</p> <p>22 What I see here is just a</p> <p>23 photocopy of the front of the file wrapper.</p> <p>24 <b>Q. Just one enclosure, the</b></p> <p>25 <b>photocopy?</b></p>	<p style="text-align: right;">Page 141</p> <p>1 P. Sutton</p> <p>2 supplement the information I'm giving you</p> <p>3 today, but I don't think anything that Todd</p> <p>4 will say will negate any of the information</p> <p>5 that I was able to share with you today.</p> <p>6 <b>Q. That's not the question I asked.</b></p> <p>7 <b>As between yourself and Todd</b></p> <p>8 <b>Sharinn, wouldn't you agree that Todd</b></p> <p>9 <b>Sharinn, the author of this correspondence,</b></p> <p>10 <b>is the best person to talk about why he</b></p> <p>11 <b>sent this correspondence and what he meant</b></p> <p>12 <b>when he said what he said in it?</b></p> <p>13 A. I believe that Todd Sharinn may</p> <p>14 have testimony to give you regarding</p> <p>15 Exhibit 5 and he will be likely doing that</p> <p>16 tomorrow.</p> <p>17 <b>Q. Do you have any other evidence</b></p> <p>18 <b>that you're aware of to corroborate your</b></p> <p>19 <b>testimony today that this correspondence</b></p> <p>20 <b>was being sent because Mark wanted,</b></p> <p>21 <b>Mr. Evens wanted to docket the maintenance</b></p> <p>22 <b>fees?</b></p> <p>23 A. I have to think about that, and</p> <p>24 if I have further evidence or information,</p> <p>25 I'll be happy to share that with you.</p>



37 (Pages 142 to 145)

<p style="text-align: right;">Page 142</p> <p>1 P. Sutton</p> <p>2 <b>Q. Please do. If you don't, I'll</b></p> <p>3 <b>assume that this is all that you have, but</b></p> <p>4 <b>we can leave the deposition open at the</b></p> <p>5 <b>end, but I would like to find out all the</b></p> <p>6 <b>evidence upon which you say you testified</b></p> <p>7 <b>to that effect.</b></p> <p>8 A. I have no further information</p> <p>9 that I can recall right now.</p> <p>10 <b>Q. Okay.</b></p> <p>11 <b>Mr. Sutton, in your practice at</b></p> <p>12 <b>Greenberg Traurig, are you ever aware of</b></p> <p>13 <b>Greenberg missing a deadline for payment</b></p> <p>14 <b>ever maintenance fees for which Greenberg</b></p> <p>15 <b>was responsible?</b></p> <p>16 MR. CHU: Objection.</p> <p>17 A. I'm not certain. I don't have a</p> <p>18 specific recollection.</p> <p>19 <b>Q. How about while you were at</b></p> <p>20 <b>Thelen?</b></p> <p>21 A. I have no recollection of that</p> <p>22 occurring at Thelen.</p> <p>23 <b>Q. I apologize if this seems scatter</b></p> <p>24 <b>shot, but I'm clearing up some items left</b></p> <p>25 <b>over from this morning.</b></p>	<p style="text-align: right;">Page 144</p> <p>1 P. Sutton</p> <p>2 Patent and the litigation matters involving</p> <p>3 the '160 Patent were going to be</p> <p>4 transferred to Mark Evens at Thelen.</p> <p>5 <b>Q. So that information about that</b></p> <p>6 <b>conversation between Alan Fell and Todd</b></p> <p>7 <b>Sharinn came secondhand to you, Todd</b></p> <p>8 <b>Sharinn told you about that conversation,</b></p> <p>9 <b>you weren't present for the conversation,</b></p> <p>10 <b>correct?</b></p> <p>11 A. That's correct.</p> <p>12 <b>Q. For a patent for which Greenberg</b></p> <p>13 <b>is responsible for the maintenance fees and</b></p> <p>14 <b>a maintenance fee deadline appears on a</b></p> <p>15 <b>monthly docket report, what is GT's</b></p> <p>16 <b>standard operating procedure then when that</b></p> <p>17 <b>deadline appears on a monthly operating</b></p> <p>18 <b>report?</b></p> <p>19 A. We check with the client in some</p> <p>20 instances if we have reason to believe that</p> <p>21 the client may not want to incur the fees</p> <p>22 associated with that. If the patent is</p> <p>23 involved in a litigation, we pay the</p> <p>24 maintenance fee and bill the client because</p> <p>25 we can't imagine that the client would want</p>
<p style="text-align: right;">Page 143</p> <p>1 P. Sutton</p> <p>2 <b>The Markman Hearing on the '160</b></p> <p>3 <b>Patent before Judge Lynch, I believe, did</b></p> <p>4 <b>you attend that hearing?</b></p> <p>5 A. No, I did not. Mark Evens and</p> <p>6 Todd Sharinn did and -- I know at least</p> <p>7 those two gentlemen did.</p> <p>8 <b>Q. Do you know if Quickie was</b></p> <p>9 <b>expecting you to attend?</b></p> <p>10 A. If Quickie was expecting me to</p> <p>11 attend, I would have attended.</p> <p>12 <b>Q. You testified earlier that Alan</b></p> <p>13 <b>Fell said after that hearing that the '160</b></p> <p>14 <b>Patent was being transferred to Mark</b></p> <p>15 <b>Evens -- if you weren't present at the</b></p> <p>16 <b>hearing, then how do you know that that</b></p> <p>17 <b>conversation took place?</b></p> <p>18 A. That's not what I testified to.</p> <p>19 I think you've incorrectly summarized or</p> <p>20 characterized what I said.</p> <p>21 <b>Q. Okay. Well, I may have</b></p> <p>22 <b>misunderstood your earlier testimony then.</b></p> <p>23 A. Todd Sharinn was informed and</p> <p>24 informed me that the day after the Markman,</p> <p>25 Alan Fell instructed us, GT, that the '160</p>	<p style="text-align: right;">Page 145</p> <p>1 P. Sutton</p> <p>2 the patent to lapse if it's involved in a</p> <p>3 litigation. And that payment would occur</p> <p>4 at or near the initial deadline.</p> <p>5 <b>Q. What happens if the patent is not</b></p> <p>6 <b>in litigation and you have no reason to</b></p> <p>7 <b>believe that the patent would want to allow</b></p> <p>8 <b>the patent -- the client would not want to</b></p> <p>9 <b>allow the patent to expire?</b></p> <p>10 A. If there are circumstances where</p> <p>11 we're unable to get a hold of the client,</p> <p>12 either through the client traveling or</p> <p>13 whatever and -- we try to contact the</p> <p>14 client.</p> <p>15 If we're unable to, if in doubt,</p> <p>16 we would pay the maintenance fee and bill</p> <p>17 the client -- or we would not pay the</p> <p>18 maintenance fee and since the client didn't</p> <p>19 get back to us and pay it after that</p> <p>20 initial deadline, there are subsequent</p> <p>21 deadlines, and simply the client, because</p> <p>22 it did not get back to us, has to pay a</p> <p>23 higher disbursement for payment after that</p> <p>24 initial deadline, but the patent would not</p> <p>25 lapse because the maintenance fee would be</p>

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<p style="text-align: right;">Page 146</p> <p>1 P. Sutton</p> <p>2 paid.</p> <p>3 We don't pay those maintenance</p> <p>4 fees. Our standard practice is not to pay</p> <p>5 the maintenance fees months in advance.</p> <p>6 <b>Q. Earlier this morning we talked</b></p> <p>7 <b>about the docketing systems and some this</b></p> <p>8 <b>afternoon.</b></p> <p>9 A. May I correct myself?</p> <p>10 <b>Q. Sure.</b></p> <p>11 A. There have been some clients who</p> <p>12 wish to look at an entire year in advance</p> <p>13 when they view their portfolio, and rather</p> <p>14 than be bugged with reminders during the</p> <p>15 year, if their portfolio is large, they</p> <p>16 make a decision earlier in the year as to</p> <p>17 all those patents it wishes to maintain and</p> <p>18 all those it doesn't wish to maintain, and</p> <p>19 we sometimes get instructions en masse to</p> <p>20 simply pay all those maintenance fees and</p> <p>21 we do so throughout the year without our</p> <p>22 having to interact with the client</p> <p>23 thereafter.</p> <p>24 <b>Q. Okay.</b></p> <p>25 <b>Focusing then on the docketing</b></p>	<p style="text-align: right;">Page 148</p> <p>1 P. Sutton</p> <p>2 where the paralegal does that on his or her</p> <p>3 own.</p> <p>4 <b>Q. When the paralegal does that</b></p> <p>5 <b>function on his or her own, is there a</b></p> <p>6 <b>check performed to make sure that he or she</b></p> <p>7 <b>got it right?</b></p> <p>8 A. There are times that after the</p> <p>9 paralegal does that, that he or she will</p> <p>10 generate a report, a status report, for</p> <p>11 example -- I indicated several types of</p> <p>12 reports -- that will list all of the</p> <p>13 matters and that permits me to have a</p> <p>14 checklist to reference or to</p> <p>15 cross-reference with the physical files or</p> <p>16 information when it's ultimately</p> <p>17 transferred to us and we have the prior</p> <p>18 firm's Power of Attorney revoked giving us</p> <p>19 the full and sole responsibility.</p> <p>20 <b>Q. And what instances would you or</b></p> <p>21 <b>the other responsible attorney perform that</b></p> <p>22 <b>check to make sure that the paralegal got</b></p> <p>23 <b>it right?</b></p> <p>24 <b>You said there are times that</b></p> <p>25 <b>that will occur, but I'm wondering about</b></p>
<p style="text-align: right;">Page 147</p> <p>1 P. Sutton</p> <p>2 <b>systems, I believe you testified earlier</b></p> <p>3 <b>that when the file is transferred or given</b></p> <p>4 <b>to the paralegal, that the paralegal then</b></p> <p>5 <b>goes through it and pulls out the relevant</b></p> <p>6 <b>dates or the relevant information including</b></p> <p>7 <b>dates and enters that information into the</b></p> <p>8 <b>docketing system?</b></p> <p>9 A. By way of example, I recently had</p> <p>10 sent to me a patent application file where</p> <p>11 we will be taking over responsibility -- we</p> <p>12 haven't as yet. I take that information to</p> <p>13 our docketing clerk, indicating that there</p> <p>14 is a good chance that we'll be taking that</p> <p>15 over. I open the many documents, segregate</p> <p>16 out the patent prosecution oriented</p> <p>17 documents, and the patent prosecution</p> <p>18 paralegal has the skills, the day-to-day</p> <p>19 skills to recognize what information is</p> <p>20 important that goes into the various feels</p> <p>21 of our computerized docketing beta base and</p> <p>22 can do that.</p> <p>23 There are some instances where I</p> <p>24 do that with the paralegal, but it's more</p> <p>25 likely that there will be more instances</p>	<p style="text-align: right;">Page 149</p> <p>1 P. Sutton</p> <p>2 <b>what times.</b></p> <p>3 A. The paralegal does not need any</p> <p>4 check. Our paralegals are, have many years</p> <p>5 of day-to-day responsibilities and skills</p> <p>6 so that they do not need an attorney</p> <p>7 looking over their shoulder to do this.</p> <p>8 There are systems in place where if the</p> <p>9 data is entered by somebody who is not more</p> <p>10 senior among the patent prosecution</p> <p>11 paralegals, that a more senior person will</p> <p>12 go over that and double-check it.</p> <p>13 <b>Q. Okay.</b></p> <p>14 <b>Earlier you said that Latisha --</b></p> <p>15 <b>and you still don't remember her last name?</b></p> <p>16 A. I believe she was born in the</p> <p>17 Philippines, but I don't remember the last</p> <p>18 name, but I can get the name, but I just,</p> <p>19 for the life of me, I just don't remember</p> <p>20 her name right now. It's been several</p> <p>21 years since she left the firm.</p> <p>22 <b>Q. Understood.</b></p> <p>23 A. But I do know her first name was</p> <p>24 Latisha.</p> <p>25 <b>Q. Was she a senior paralegal that</b></p>

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<p style="text-align: right;">Page 150</p> <p>1 <b>P. Sutton</b>  2 <b>would not need someone over her to</b>  3 <b>double-check her work?</b>  4 A. Yes. She had extensive  5 experience before we brought her into our  6 firm.  7 <b>Q. What experience did she have?</b>  8 A. Years of doing just this at one  9 or more patent IP boutiques.  10 <b>Q. When you say doing just this,</b>  11 <b>you're saying she worked with the PATS 97</b>  12 <b>system for years?</b>  13 A. That or its equivalent and/or its  14 equivalent. It may be that she worked with  15 more than just PATS. It's my recollection  16 that she worked with PATS, but I believe  17 that she was with firms that used other  18 systems that are, that perform the  19 identical functions, but possibly from  20 different vendors. There are several  21 vendors out there that provide software  22 that do these various functions.  23 <b>Q. When you say you believe that she</b>  24 <b>was with firms that used other systems,</b>  25 <b>upon what do you base that belief?</b></p>	<p style="text-align: right;">Page 152</p> <p>1 <b>P. Sutton</b>  2 A. I would have played some part in  3 that demonstration.  4 <b>Q. What role did you play?</b>  5 A. I was either head or senior or  6 co-head of the intellectual property  7 practice of Greenberg Traurig.  8 <b>Q. So is that one of the functions</b>  9 <b>then of the head or the co-head of the IP</b>  10 <b>practice is to vet, for lack of a better</b>  11 <b>term, paralegal candidates?</b>  12 A. I do that personally because  13 while paralegals are not senior most people  14 in the hierarchy of a law firm, their daily  15 responsibilities are important, and I take  16 it upon myself to interview and vet  17 paralegals, whether they be on the patent  18 litigation end or on the patent prosecution  19 end.  20 <b>Q. So then did you personally</b>  21 <b>interview Latisha?</b>  22 A. I remember meeting her and  23 questioning her before she was hired.  24 <b>Q. How did she did go demonstrating</b>  25 <b>that she was thoroughly familiar on a</b></p>
<p style="text-align: right;">Page 151</p> <p>1 <b>P. Sutton</b>  2 A. I base that on my daily  3 conversations with her regarding PATS. It  4 was clear that she was familiar with PATS  5 and its forms of reports and its form of  6 database. That's my recollection.  7 <b>Q. So how -- strike that.</b>  8 <b>So she had the, Latisha,</b>  9 <b>whomever, had the requisite knowledge on</b>  10 <b>the use of PATS. How did you go about</b>  11 <b>ensuring that she had the requisite</b>  12 <b>knowledge and experience to know what</b>  13 <b>information to pull out of a patent history</b>  14 <b>to enter into PATS?</b>  15 A. She had demonstrated to us prior  16 to our hiring her that she was thoroughly  17 familiar on a day-to-day basis and had all  18 of the skills associated with running on a  19 senior level a computerized patent  20 docketing system.  21 <b>Q. When you say she demonstrated to</b>  22 <b>us, who is the us in that statement?</b>  23 A. Greenberg Traurig.  24 <b>Q. Were you a part of that</b>  25 <b>demonstration?</b></p>	<p style="text-align: right;">Page 153</p> <p>1 <b>P. Sutton</b>  2 <b>day-to-day basis and had all the skills</b>  3 <b>associated with running a computerized</b>  4 <b>patent docketing system?</b>  5 A. She was quizzed -- first of all,  6 I believe she was known to one or more  7 people at the prior firm that she was with.  8 I'm not certain of this, but I believe one  9 or more attorneys at Greenberg Traurig that  10 had joined our firm knew of her because  11 they had worked with her at the prior IP  12 boutique.  13 But quite apart from that, we  14 have questions that the answers to which  15 will give us information as to whether  16 someone is a person who is truly skilled in  17 this area. We can tell by the questions we  18 ask and the answers that they give and the  19 manner in which they give those answers  20 <b>Q. You say she was quizzed. Was</b>  21 <b>that a written quiz?</b>  22 A. No.  23 <b>Q. Verbal, oral quiz?</b>  24 A. Correct.  25 <b>Q. These questions that you're</b></p>

40 (Pages 154 to 157)

<p style="text-align: right;">Page 154</p> <p>1 <b>P. Sutton</b>  2 <b>referring to, are those questions written</b>  3 <b>down anywhere?</b>  4 A. Not that I know of. They need  5 not be because we deal with this on a daily  6 basis.  7 <b>Q. And again, who is the "we" in</b>  8 <b>that statement?</b>  9 A. Greenberg Traurig, it would be  10 myself and one or more other patent  11 attorneys. We have 150, 200 intellectual  12 property attorneys at the firm. One or  13 more of us gets involved in this process.  14 If it's a patent prosecution  15 paralegal, the attorneys involved will be  16 more likely those whose practice is focused  17 on patent prosecution. In the case of a  18 patent litigation paralegal, it would be  19 one or more litigators, IP litigators,  20 specifically patent litigators that will be  21 involved in this vetting process.  22 <b>Q. And what type of paralegal was</b>  23 <b>Latisha?</b>  24 A. She was a patent prosecution  25 paralegal.</p>	<p style="text-align: right;">Page 156</p> <p>1 <b>P. Sutton</b>  2 <b>thought the July 10, 2003 date on Exhibit 3</b>  3 <b>was the date that the PATS information was</b>  4 <b>transferred over to the DIAMS system.</b>  5 <b>Do you recall if Latisha was</b>  6 <b>involved in that transfer?</b>  7 A. I don't believe Latisha was  8 involved in that transfer. I believe that  9 Latisha -- I'm sorry, strike that. I  10 believe I misspoke.  11 Latisha may have been involved in  12 both the PATS and the DIAMS systems.  13 <b>Q. So then is it fair to assume that</b>  14 <b>at least as of July 2003 she was still at</b>  15 <b>Greenberg Traurig?</b>  16 A. To the best of my recollection.  17 I believe she was. That's 5 years ago. I  18 believe she was still with us.  19 <b>Q. If you wanted to talk to Latisha</b>  20 <b>today, how would you reach her, do you</b>  21 <b>know?</b>  22 A. I don't know.  23 <b>Q. You don't know where shes?</b>  24 A. I don't know.  25 <b>Q. When is the last time you've</b></p>
<p style="text-align: right;">Page 155</p> <p>1 <b>P. Sutton</b>  2 <b>Q. What sort of documents would</b>  3 <b>Greenberg Traurig maintain concerning</b>  4 <b>Latisha's employment with the firm?</b>  5 A. I don't know the answer as I'm  6 sitting here today. It would require -- I  7 mean, I'm not sure what category, but I  8 think it would have to involve a question  9 to human resources department of our firm  10 to see if they have some kind of record.  11 I'm sure they must have some record of her  12 having been employed by us in the period  13 that she was employed.  14 <b>Q. Do you, yourself, have any files</b>  15 <b>concerning Latisha's employment?</b>  16 A. No.  17 <b>Q. When did Latisha leave Greenberg</b>  18 <b>Traurig?</b>  19 A. I do not recall the date, but it  20 was several years ago. It was not, it was  21 not within the last year or two. So it was  22 at least -- I believe to the best of my  23 recollection it was more than two years  24 ago.  25 <b>Q. Well, you said earlier that you</b></p>	<p style="text-align: right;">Page 157</p> <p>1 <b>P. Sutton</b>  2 <b>spoken with her?</b>  3 A. When she was employed at our  4 firm. I wished her well just before she  5 was leaving.  6 <b>Q. Do you know if your counsel have</b>  7 <b>spoken with her?</b>  8 A. I'm sorry?  9 <b>Q. Do you know if Greenberg's</b>  10 <b>outside counsel in litigation have spoken</b>  11 <b>with her?</b>  12 A. I believe your question cross the  13 line on attorney-client privilege because  14 it would go to the substance of  15 communications.  16 <b>Q. I'm not asking about the</b>  17 <b>substance. I'm just asking if they spoke,</b>  18 <b>if that conversation occurred. I don't</b>  19 <b>think that's privileged.</b>  20 A. I don't know the answer to your  21 question as to whether or not anybody has  22 spoken to her since she's left.  23 <b>Q. While you were at Thelen Reid,</b>  24 <b>was Thelen ever accused of malpractice on</b>  25 <b>matters for which you were working or</b></p>

41 (Pages 158 to 161)

<p style="text-align: right;">Page 158</p> <p>1 <b>P. Sutton</b>  2 <b>responsible?</b>  3 A. Not that I recall, no.  4 <b>Q. Same question with respect to</b>  5 <b>Greenberg, other than obviously this</b>  6 <b>matter, were there any other assertions</b>  7 <b>that Greenberg committed malpractice on</b>  8 <b>matters for which you had a role?</b>  9 A. Not that I know of.  10 <b>Q. How about Todd Sharinn?</b>  11 A. Not that I'm aware of.  12 <b>Q. The PATS docketing system, is</b>  13 <b>there a way to determine what changes were</b>  14 <b>made to the information in that record?</b>  15 Let me give you an example. For  16 example, if someone went in and changed a  17 deadline, is there a log or some sort of  18 transaction report that shows on X date  19 this change was made by Y person? Do you  20 understand what I'm talking about?  21 A. I'm not sure I do.  22 <b>Q. Okay.</b>  23 Let me see if I can ask it a  24 different way, because I'm not sure what  25 I'm talking about, whether there's a name</p>	<p style="text-align: right;">Page 160</p> <p>1 P. Sutton  2 <b>Q. What about DIAMS, do you know if</b>  3 <b>it's possible to generate a transaction log</b>  4 <b>in DIAMS?</b>  5 A. Again, I've never been faced with  6 that question, so I don't know the answer  7 to it.  8 <b>Q. Who would you ask at Greenberg to</b>  9 <b>see if that was possible?</b>  10 A. I wouldn't ask anybody. I'm not  11 sure I understand.  12 <b>Q. Well, I'm asking you as the</b>  13 <b>designated corporate rep to speak about the</b>  14 <b>systems if it's possible, and it sounds</b>  15 <b>like you don't know it's possible, but can</b>  16 <b>you find out if it's possible or not?</b>  17 A. I'll take your question under  18 advisement and discuss it with counsel.  19 <b>Q. Well, I think we're entitled to</b>  20 <b>an answer. I appreciate that you want to</b>  21 <b>discuss it with your counsel, but again,</b>  22 <b>I'll make a note of it and during a break</b>  23 <b>you can discuss it with your counsel and</b>  24 <b>then we'll circle back and if we need to</b>  25 <b>leave the depo open, we can.</b></p>
<p style="text-align: right;">Page 159</p> <p>1 <b>P. Sutton</b>  2 <b>for it or not, but I'm looking really for a</b>  3 <b>transactions log.</b>  4 You know, the first entry on it  5 would be on X date the entry was created by  6 Y person. The next date maybe this event  7 happened with respect to this record and  8 here is who did it, and then just down the  9 list?  10 A. I don't recall seeing a  11 transaction log.  12 <b>Q. Well, do you know if it's</b>  13 <b>possible to generate one in that software</b>  14 <b>system?</b>  15 A. What time period are we talking  16 about?  17 <b>Q. We're talking about PATS 97, I</b>  18 <b>assume it's the same software today as it</b>  19 <b>is then?</b>  20 A. I don't know.  21 <b>Q. Let's just talk about PATS 97.</b>  22 <b>In that software program, is it possible to</b>  23 <b>generate a transaction log?</b>  24 A. I never encountered the question  25 before. I just don't know.</p>	<p style="text-align: right;">Page 161</p> <p>1 <b>P. Sutton</b>  2 A. I just never had occasion to  3 consider a transaction like that.  4 <b>Q. Is there someone at Greenberg</b>  5 <b>with responsibility for maintenance of the</b>  6 <b>docketing, computerized docketing system?</b>  7 A. I believe we have a service  8 contract or support contract with the  9 vendor.  10 <b>Q. Who is the vendor?</b>  11 A. DIAMS. When we had the PATS  12 system, and the systems are the same in the  13 context of what they do, we had a support  14 arrangement with PATS.  15 <b>Q. Okay.</b>  16 The vendor would install the  17 software on Greenberg's computer system?  18 A. Are you asking me what actually  19 occurred?  20 <b>Q. What actually occurred, yes,</b>  21 <b>thank you.</b>  22 A. The vendor would certainly play a  23 role in the installation of the system on  24 Greenberg's computers.  25 <b>Q. And I think you just answered the</b></p>

42 (Pages 162 to 165)

<p style="text-align: right;">Page 162</p> <p>1 <b>P. Sutton</b>  2 <b>question, but let me be sure, we're talking</b>  3 <b>about a software package that runs on a</b>  4 <b>standard desktop, it's not a separate</b>  5 <b>computer that the system is maintained on?</b>  6 A. You're making an assumption that  7 I don't know is accurate.  8 <b>Q. Okay.</b>  9 A. I don't know whether there is a  10 server on which the software is installed  11 which would not be the same as an attorney  12 or a paralegal's desktop computer.  13 <b>Q. Okay.</b>  14 MR. LODEN: Let me ask the  15 reporter to mark Exhibit 6, I believe.  16 (Exhibit 6, Greenberg Traurig's  17 Responses to Plaintiff's  18 Interrogatories, marked for  19 identification, as of this date.)  20 BY MR. LODEN:  21 <b>Q. Mr. Sutton, the reporter has just</b>  22 <b>handed you what's been marked as Exhibit 6.</b>  23 <b>Do you recognize this document?</b>  24 A. This appears to be a copy of  25 Greenberg Traurig's responses to</p>	<p style="text-align: right;">Page 164</p> <p>1 <b>P. Sutton</b>  2 <b>Q. Do you recall when the PATS 97</b>  3 <b>system was taken off-line?</b>  4 A. I don't remember the date when  5 that occurred, no.  6 <b>Q. Why did Greenberg switch?</b>  7 A. These systems and the vendors are  8 evaluated from time to time, and if in the  9 view of the firm, if there's a superior  10 system or there's a more cost  11 effectiveness, or support is better, or  12 there are many factors that can go into  13 choosing a software vendor, and on balance  14 DIAMS appeared to be more what was  15 preferable.  16 Keep in mind that we have a  17 system that is accessed over several  18 states, and I believe that the DIAMS system  19 lends itself well to several offices having  20 access to the data either simultaneously or  21 in seriatim.  22 <b>Q. At the end of the response there</b>  23 <b>to interrogatory number 8 in the</b>  24 <b>parenthesis, there is a mention that an</b>  25 <b>office had been using DIAMS since early</b></p>
<p style="text-align: right;">Page 163</p> <p>1 <b>P. Sutton</b>  2 plaintiff's interrogatories, a copy of  3 which was signed by me on August 13, 2007.  4 <b>Q. So that's your signature there on</b>  5 <b>the last page?</b>  6 A. That appears to be my signature.  7 <b>Q. If I could get you to turn to the</b>  8 <b>interrogatory number 8 that appears on the</b>  9 <b>top of page 5 -- do you see where I'm at?</b>  10 A. Yes.  11 <b>Q. The responses -- well, you can</b>  12 <b>see what the response there is.</b>  13 A. Yes, that's the interrogatory  14 response that I referenced to shortly after  15 our lunch break.  16 <b>Q. Right.</b>  17 <b>Do you recall at what period in</b>  18 <b>late 2003 GT transferred to DIAMS? Was it</b>  19 <b>the July --</b>  20 A. I believe that there was, it was  21 not a single day transfer. I believe as  22 I've testified previously that both systems  23 were running simultaneously for a period of  24 time and that -- so there was not like a  25 single date.</p>	<p style="text-align: right;">Page 165</p> <p>1 <b>P. Sutton</b>  2 <b>2003.</b>  3 <b>Do you see that?</b>  4 A. Yes.  5 <b>Q. Which office was that?</b>  6 A. I don't recall, but it was based  7 on their success with the use of DIAMS that  8 influenced our decision to go firm-wide  9 with DIAMS.  10 <b>Q. And when you say our decision,</b>  11 <b>were you personally part of the</b>  12 <b>decision-making process?</b>  13 A. I may have been, but I don't  14 believe I was involved in the day-to-day  15 details of the evaluation.  16 <b>Q. Does Greenberg Traurig charge its</b>  17 <b>clients to monitor patent deadlines with</b>  18 <b>this computerized docketing system?</b>  19 A. That's up to the attorney, on an  20 attorney-by-attorney basis as to what they  21 do.  22 So that how a client is billed is  23 a matter that's left to the discretion of  24 each attorney and that attorney's  25 relationship with his or her client.</p>



43 (Pages 166 to 169)

<p style="text-align: right;">Page 166</p> <p>1 P. Sutton</p> <p>2 <b>Q. When you say how a client is</b></p> <p>3 <b>billed --</b></p> <p>4 A. And what they're billed for.</p> <p>5 <b>Q. Okay.</b></p> <p>6 <b>Well, in the instances where a</b></p> <p>7 <b>client is billed, are they billed just for</b></p> <p>8 <b>the time to use the system or is it a flat</b></p> <p>9 <b>fee, a monthly fee?</b></p> <p>10 A. That will vary from attorney to</p> <p>11 attorney, and that's a decision that each</p> <p>12 attorney responsible for a client makes and</p> <p>13 negotiates with his or her client.</p> <p>14 <b>Q. Do you know if Greenberg Traurig</b></p> <p>15 <b>charged Quickie for monitoring the</b></p> <p>16 <b>deadlines on the '160 Patent?</b></p> <p>17 A. I'd have to review the invoices</p> <p>18 to know whether that's so or not.</p> <p>19 <b>Q. When you reviewed the invoice --</b></p> <p>20 <b>well, you said you would have to review</b></p> <p>21 <b>invoices. What aspects of the invoices</b></p> <p>22 <b>would you be looking at, the time records</b></p> <p>23 <b>or the expenses or something else?</b></p> <p>24 A. Did you use the word monitoring?</p> <p>25 THE WITNESS: Could you read back</p>	<p style="text-align: right;">Page 168</p> <p>1 <b>P. Sutton</b></p> <p>2 A. Or I'm not aware of any instance</p> <p>3 where we charged the client for simply</p> <p>4 having that information in our system.</p> <p>5 <b>Q. So then you don't need to go back</b></p> <p>6 <b>and look at the invoices. You're saying</b></p> <p>7 <b>that no charge was incurred or levied?</b></p> <p>8 A. Well, I would want to check the</p> <p>9 invoices to see if, in fact, if there is an</p> <p>10 entry for charging, I'd want to be able to</p> <p>11 confirm that my testimony is accurate.</p> <p>12 But the voluntarily monitoring</p> <p>13 that's referred to in response to</p> <p>14 interrogatory number 16 refers to our</p> <p>15 having it in our computerized docketing</p> <p>16 system.</p> <p>17 <b>Q. And the volunteer language there</b></p> <p>18 <b>means, you intended that to mean that</b></p> <p>19 <b>Greenberg was not charging Quickie for that</b></p> <p>20 <b>monitoring service?</b></p> <p>21 A. That's what I understood to be</p> <p>22 the case when I signed the response to the</p> <p>23 Interrogatory.</p> <p>24 <b>Q. Okay.</b></p> <p>25 <b>If I could get you to turn to</b></p>
<p style="text-align: right;">Page 167</p> <p>1 P. Sutton</p> <p>2 that last question?</p> <p>3 <b>Q. Yeah.</b></p> <p>4 <b>My question was: Do you know if</b></p> <p>5 <b>Greenberg Traurig charged Quickie for</b></p> <p>6 <b>monitoring the deadlines on the '160</b></p> <p>7 <b>Patent, and your response was I'd have to</b></p> <p>8 <b>review the invoices.</b></p> <p>9 A. Well, that's one thing I'd want</p> <p>10 to review, but I believe that in the</p> <p>11 response to interrogatory number 16 it</p> <p>12 indicates that GT voluntarily monitored the</p> <p>13 '160 Patent before Quickie revoked all</p> <p>14 powers of attorney given to GT as to the</p> <p>15 '160 Patent no later than March 4, 2003.</p> <p>16 The use of the word monitor as I</p> <p>17 used it, since I signed this response on</p> <p>18 August 13, 2007, is that we put it into our</p> <p>19 system so that we would have the</p> <p>20 information available to us, and we didn't</p> <p>21 charge the client -- that's what the term</p> <p>22 voluntarily suggests -- we put it into the</p> <p>23 system and did not charge the client for</p> <p>24 doing so.</p> <p>25 <b>Q. So then I take it --</b></p>	<p style="text-align: right;">Page 169</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>interrogatory number --</b></p> <p>3 A. I'm sorry, and it also meant that</p> <p>4 we had no responsibility -- you have to</p> <p>5 look at the question and the answer no that</p> <p>6 precedes the statement about voluntarily</p> <p>7 monitoring. So really in fairness you have</p> <p>8 to look at the entire response to</p> <p>9 interrogatory number 16.</p> <p>10 MR. LODEN: Objection. Move to</p> <p>11 strike. Nonresponsive.</p> <p>12 BY MR. LODEN:</p> <p>13 <b>Q. Look at interrogatory number 11,</b></p> <p>14 <b>please. It begins on the bottom of page 5</b></p> <p>15 <b>and goes over to page 6. Do you see where</b></p> <p>16 <b>I'm at?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. The response starts off with, "GT</b></p> <p>19 <b>does not believe it receives such a notice</b></p> <p>20 <b>or reminder," and then the part I want to</b></p> <p>21 <b>talk about is the second sentence, "GT has</b></p> <p>22 <b>searched its records and not found such a</b></p> <p>23 <b>notice or reminder and its patent attorneys</b></p> <p>24 <b>do not recall having received one."</b></p> <p>25 <b>Were you involved in the search</b></p>

44 (Pages 170 to 173)

<p style="text-align: right;">Page 170</p> <p>1 <b>P. Sutton</b>  2 <b>of GT's records for a reminder or notice?</b>  3 A. From a supervisory standpoint,  4 yes, but I don't recall myself physically  5 going through page by page the records.  6 I did go through some documents,  7 but I don't recall which ones those were,  8 but we did not find a notice or reminder.  9 <b>Q. Who was actually involved in the</b>  10 <b>sifting through the documents?</b>  11 A. I don't know who, which -- today  12 as I'm testifying, I don't have a name for  13 you or names as to who participated in that  14 search other than myself.  15 <b>Q. Okay.</b>  16 <b>What records did they search?</b>  17 A. I believe they searched all of  18 the records having to do with patent  19 prosecution in any way associated with the  20 '160 Patent to confirm that something  21 wasn't misfiled or whatever.  22 <b>Q. I mean, did they pull documents</b>  23 <b>in from outside storage?</b>  24 A. I can't testify today as to the  25 location of the physical documents before</p>	<p style="text-align: right;">Page 172</p> <p>1 <b>P. Sutton</b>  2 <b>consulted?</b>  3 A. I don't know, as I'm sitting here  4 today, what the names of any other patent  5 attorneys who were consulted, what those  6 names are, or if there are any others.  7 <b>Q. In that search, what were they</b>  8 <b>looking for?</b>  9 A. The response to interrogatory  10 number 11.  11 <b>Q. Right, but interrogatory number</b>  12 <b>11 asks if GT ever received any notice or</b>  13 <b>reminder concerning the need to pay</b>  14 <b>maintenance fees.</b>  15 <b>So my question is what notices or</b>  16 <b>reminders were being searched for just --</b>  17 A. Any, any.  18 <b>Q. Any.</b>  19 <b>So that would include notices or</b>  20 <b>reminders that came from the Patent and</b>  21 <b>Trademark Office?</b>  22 A. It would include any notice or  23 reminder.  24 <b>Q. How about notices or reminders</b>  25 <b>that were kicked out from the computerized</b></p>
<p style="text-align: right;">Page 171</p> <p>1 P. Sutton  2 the search began.  3 <b>Q. The second half after the semi</b>  4 <b>colon in that sentence -- sorry -- oh, no,</b>  5 <b>I'm sorry, after the semi colon where it</b>  6 <b>says, "and its patent attorneys do not</b>  7 <b>recall having received one" -- what patent</b>  8 <b>attorneys are you referring to there?</b>  9 A. Those would be any and all patent  10 attorneys that had anything to do with  11 Quickie or its patent prosecution matters.  12 <b>Q. So that's obviously yourself?</b>  13 A. And Todd Sharinn.  14 <b>Q. So you spoke with Todd Sharinn?</b>  15 A. I believe that Todd Sharinn was  16 consulted.  17 <b>Q. Did you, yourself, consult him</b>  18 <b>concerning --</b>  19 A. I don't recall who consulted him.  20 <b>Q. Well, do you recall yourself</b>  21 <b>consulting him?</b>  22 A. I don't recall myself consulting  23 him in regard to the second sentence of the  24 response to interrogatory number 11.  25 <b>Q. What other patent attorneys were</b></p>	<p style="text-align: right;">Page 173</p> <p>1 <b>P. Sutton</b>  2 <b>docketing system?</b>  3 A. There would be no reminder or  4 notice on the computerized docketing system  5 because our Power of Attorney was revoked  6 well prior to the deadline in May -- I'm  7 sorry, the deadline for paying the first  8 maintenance fee.  9 So there would be no reminder or  10 report that would include that for that  11 reason. We were no longer representing  12 Quickie in that regard. Our power had been  13 revoked. It would be inappropriate for us  14 to be involved thereafter.  15 <b>Q. So then it's your testimony then</b>  16 <b>that after -- after the Power of Attorney</b>  17 <b>was revoked, that the computerized</b>  18 <b>docketing system no longer would generate</b>  19 <b>reminders or notices of maintenance fees</b>  20 <b>due on the '160 Patent?</b>  21 A. I've given you a lot of testimony  22 earlier today with respect to that issue  23 and I think you've mischaracterized my  24 prior testimony.  25 <b>Q. Okay. I think your prior</b></p>



45 (Pages 174 to 177)

<p style="text-align: right;">Page 174</p> <p>1 <b>P. Sutton</b>  2 <b>testimony was -- it is what it is, we'll</b>  3 <b>leave it at that.</b>  4 MR. LODEN: I'd like to get the  5 reporter to mark Exhibit 7.  6 (Exhibit 7, Document Bates  7 stamped 380 to 384, marked for  8 identification, as of this date.)  9 THE WITNESS: Are you good for a  10 3-minute bathroom break?  11 MR. LODEN: That's fine.  12 (Recess taken from 2:24 p.m. to  13 2:31 p.m.)  14 (Exhibit 8, DIAMS Patent Record  15 Sheet, marked for identification, as  16 of this date.)  17 BY MR. LODEN:  18 <b>Q. Mr. Sutton, I've just handed you</b>  19 <b>what's been marked as Exhibit 8.</b>  20 <b>Do you recognize this document?</b>  21 <b>Take a moment to familiarize yourself.</b>  22 A. This appears to be a DIAMS patent  23 record sheet.  24 <b>Q. So then Exhibit 8 is the DIAMS</b>  25 <b>corollary to Exhibit 3, which is the PATS</b></p>	<p style="text-align: right;">Page 176</p> <p>1 <b>P. Sutton</b>  2 A. Mr. Jacobs is a patent attorney  3 who left our firm, I forget whether it was  4 a year ago or two years ago, and then went  5 to another firm, and Matthew Tropper is a  6 patent attorney who works part-time in  7 patent prosecution matters for our firm.  8 <b>Q. Why isn't Todd Sharinn listed as</b>  9 <b>an attorney here?</b>  10 A. These are patent prosecution  11 attorneys. I believe that Todd Sharinn's  12 expertise is in the patent litigation area,  13 not in the patent prosecution area. He  14 would be best -- I hope I'm not  15 misspeaking, but I believe he would  16 characterize his specialty as litigation as  17 opposed to patent prosecution.  18 <b>Q. Well, if you look back at Exhibit</b>  19 <b>3, I believe you said earlier that under</b>  20 <b>the attorneys, it uses initials, but the</b>  21 <b>initials TSS appear in that PATS record</b>  22 <b>sheet, and you said earlier that that was</b>  23 <b>Todd Sharinn, correct?</b>  24 A. Yes.  25 <b>Q. So why did Todd Sharinn appear on</b></p>
<p style="text-align: right;">Page 175</p> <p>1 <b>P. Sutton</b>  2 <b>record sheet?</b>  3 A. I'm not comfortable with the  4 language that you use. It is a DIAMS  5 patent record sheet relating to the '160  6 Patent.  7 <b>Q. Okay.</b>  8 <b>Up on the top left-hand corner,</b>  9 <b>here it's called docket ID, but it looks</b>  10 <b>like the same numbers as on PATS were</b>  11 <b>labeled as a GT number.</b>  12 A. That appears to be the client  13 matter number.  14 <b>Q. So that's a client matter number</b>  15 <b>in which this record was taken?</b>  16 A. That appears to be a client  17 matter number for a U.S. matter, namely the  18 '160 Patent.  19 <b>Q. Right.</b>  20 <b>Looking at the attorneys there on</b>  21 <b>the right-hand column, do you see where it</b>  22 <b>references Albert L. Jacobs and Matthew B.</b>  23 <b>Tropper?</b>  24 A. Yes.  25 <b>Q. Who is Albert L. Jacobs?</b></p>	<p style="text-align: right;">Page 177</p> <p>1 <b>P. Sutton</b>  2 <b>the PATS record, but not on the DIAMS</b>  3 <b>record?</b>  4 A. You'll notice that my initials  5 appear first, and one reason for his  6 appearing there together with Augusto  7 D'Emilio Rogers initials is that he would  8 be given copies of reports as a result of  9 his initials being there, so he could see  10 what was going on with his own client even  11 though his expertise may not be patent  12 prosecution.  13 <b>Q. But your name, Paul Sutton, also</b>  14 <b>does not appear under the list of attorneys</b>  15 <b>on the DIAMS record sheet in Exhibit 8,</b>  16 <b>correct?</b>  17 A. Well, if you'll take a look at  18 the memo note, when Todd Sharinn left the  19 firm, at some point Al Jacobs, the  20 Mr. Jacobs we've just referred to earlier  21 in the upper right hand, on April 18, 2006,  22 took over responsibility for clients that  23 Todd Sharinn serviced while he was with our  24 firm, and when I say that we need an  25 attorney associated with each record and Al</p>

46 (Pages 178 to 181)

<p style="text-align: right;">Page 178</p> <p>1 P. Sutton</p> <p>2 Jacobs requested that he be the person on</p> <p>3 the matters that involve Todd Sharinn's</p> <p>4 clients such as Quickie and that's the</p> <p>5 reason for the memo.</p> <p>6 <b>Q. Well --</b></p> <p>7 A. There would be no reason for both</p> <p>8 myself and Al Jacobs to be on there.</p> <p>9 <b>Q. Well, Quickie was your client as</b></p> <p>10 <b>well as Todd's, right?</b></p> <p>11 A. I always thought of Quickie as</p> <p>12 Todd Sharinn's client. He originated that</p> <p>13 client. It was his relationship with Allan</p> <p>14 Fell that the client was referred to him.</p> <p>15 I was brought in as somebody who</p> <p>16 had more years of experience litigating</p> <p>17 than Todd and Todd felt that we would stand</p> <p>18 a better chance of obtaining that Medtronic</p> <p>19 litigation if I was participating.</p> <p>20 <b>Q. So you say that Al Jacobs then</b></p> <p>21 <b>was substituted in for Todd Sharinn on</b></p> <p>22 <b>April 18, '06?</b></p> <p>23 A. No, that's not what I said. Todd</p> <p>24 Sharinn -- I don't know if Todd Sharinn</p> <p>25 was -- when did Todd Sharinn leave our</p>	<p style="text-align: right;">Page 180</p> <p>1 P. Sutton</p> <p>2 have to show me a copy so I can give you</p> <p>3 that information from the record. But this</p> <p>4 is a -- let's see now --</p> <p>5 <b>Q. Well, I'll tell you, I've looked</b></p> <p>6 <b>for that sheet and it wasn't included in</b></p> <p>7 <b>Greenberg's production.</b></p> <p>8 A. Well, then, it may not exist. If</p> <p>9 it existed, I'm sure you would have a copy.</p> <p>10 But if -- you see, this memo is an entry</p> <p>11 that occurred on or after April 18, 2006</p> <p>12 and Todd Sharinn is no longer with the</p> <p>13 firm. So that's the reason why Todd</p> <p>14 Sharinn would no longer be on this record.</p> <p>15 <b>Q. So is it fair to assume then that</b></p> <p>16 <b>sometime after April 18, 2006 Todd Sharinn</b></p> <p>17 <b>was removed from the record and Albert L.</b></p> <p>18 <b>Jacobs was inserted?</b></p> <p>19 A. I'm not making any assumptions.</p> <p>20 I'm here to give you truthful testimony.</p> <p>21 So what's clear is that Todd Sharinn had</p> <p>22 left our firm on or about September 26,</p> <p>23 2005 and thereafter on April 18, 2006 per a</p> <p>24 telephone conference with Al Jacobs, the</p> <p>25 paralegal indicates that Al Jacobs will</p>
<p style="text-align: right;">Page 179</p> <p>1 P. Sutton</p> <p>2 firm?</p> <p>3 <b>Q. That's a good question.</b></p> <p>4 MR. CHU: It's in the</p> <p>5 interrogatories. You can check that.</p> <p>6 If you can look at 9.</p> <p>7 A. Yes. If you look to the response</p> <p>8 to interrogatory number 9 it indicates that</p> <p>9 Todd Sharinn left our firm on or about</p> <p>10 September 26, 2005.</p> <p>11 So it's not that Al Jacobs took</p> <p>12 over for Todd Sharinn. Todd was no longer</p> <p>13 with our firm. Al Jacobs simply requested</p> <p>14 that if there were queries relating to this</p> <p>15 matter, that he be the person who was</p> <p>16 primarily the go to person or responsible.</p> <p>17 <b>Q. When Greenberg transferred from</b></p> <p>18 <b>the PATS system to the DIAMS system, Todd</b></p> <p>19 <b>Sharinn was still employed at Greenberg,</b></p> <p>20 <b>correct, in 2003?</b></p> <p>21 A. That's correct.</p> <p>22 <b>Q. So when the patent record sheet</b></p> <p>23 <b>in DIAMS was created for the '160 Patent,</b></p> <p>24 <b>who were the attorneys listed?</b></p> <p>25 A. You'll have to show me, you'll</p>	<p style="text-align: right;">Page 181</p> <p>1 P. Sutton</p> <p>2 have his name as the responsible attorney</p> <p>3 for that matter in our computerized</p> <p>4 docketing system.</p> <p>5 <b>Q. So you're not willing to assume</b></p> <p>6 <b>with me then that Todd Sharinn was</b></p> <p>7 <b>originally reflected in the DIAMS system as</b></p> <p>8 <b>an attorney for the '160 Patent?</b></p> <p>9 A. I don't know your question at</p> <p>10 all. I've already given testimony with</p> <p>11 respect to Exhibit 3.</p> <p>12 <b>Q. Exhibit 3 is PATS, correct?</b></p> <p>13 A. Yes, yes.</p> <p>14 <b>Q. I'm talking about DIAMS. When</b></p> <p>15 <b>the DIAMS system was put into place, how do</b></p> <p>16 <b>we know that Todd Sharinn was listed as the</b></p> <p>17 <b>attorney responsible for the '160 Patent in</b></p> <p>18 <b>the DIAMS system?</b></p> <p>19 A. Why assume that he was or wasn't?</p> <p>20 If you show me a document, I'll be able to</p> <p>21 confirm what the fact is.</p> <p>22 <b>Q. Well, like I said, we've asked</b></p> <p>23 <b>for the document, but it wasn't produced.</b></p> <p>24 <b>So as you sit here today --</b></p> <p>25 A. No, no, no, that's not correct.</p>

47 (Pages 182 to 185)

<p style="text-align: right;">Page 182</p> <p>1 P. Sutton</p> <p>2 When you say a document was not</p> <p>3 produced, that suggests that a document</p> <p>4 exists that you did not get a copy of.</p> <p>5 <b>Q. That's your spin. I'm just</b></p> <p>6 <b>saying no documents --</b></p> <p>7 A. No, your spin is that -- I'm</p> <p>8 correcting your spin. Your spin is that</p> <p>9 there's something that exists that wasn't</p> <p>10 produced.</p> <p>11 <b>Q. I'm not making a spin. That's</b></p> <p>12 <b>your interpretation. I don't know whether</b></p> <p>13 <b>it exists or not. All I know is it wasn't</b></p> <p>14 <b>included in the production.</b></p> <p>15 <b>So my question to you is: Do you</b></p> <p>16 <b>know whether Todd Sharinn was transferred</b></p> <p>17 <b>from the attorney listings in the PATS</b></p> <p>18 <b>system to the attorney listing in the DIAMS</b></p> <p>19 <b>system?</b></p> <p>20 A. I think it is likely and probable</p> <p>21 that that is the case because otherwise why</p> <p>22 would Al Jacobs need to transfer the Todd</p> <p>23 Sharinn responsibility for that matter to</p> <p>24 himself but for the existence of Todd</p> <p>25 Sharinn on the initial DIAMS system for the</p>	<p style="text-align: right;">Page 184</p> <p>1 <b>P. Sutton</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. Who did he make that request to?</b></p> <p>4 A. A paralegal who made the notation</p> <p>5 or a paralegal, a patent prosecution</p> <p>6 paralegal.</p> <p>7 <b>Q. Were you present when Mr. Jacobs</b></p> <p>8 <b>made that request?</b></p> <p>9 A. No, I don't recall being present</p> <p>10 when, during the phone conference</p> <p>11 referenced on Exhibit 8.</p> <p>12 <b>Q. So then how do you know that</b></p> <p>13 <b>Mr. Jacobs requested to be added to this</b></p> <p>14 <b>record?</b></p> <p>15 A. That's how I interpret the</p> <p>16 sentence that I'm reading on Exhibit 8.</p> <p>17 <b>Q. So Mr. Jacobs has not told you</b></p> <p>18 <b>that he wanted to be added?</b></p> <p>19 A. It appears on Exhibit 8 that</p> <p>20 Mr. Jacobs told a patent prosecution</p> <p>21 paralegal that he wanted to be, his name</p> <p>22 should be there as having taken</p> <p>23 responsibility.</p> <p>24 <b>Q. Were you party to the decision to</b></p> <p>25 <b>list Al Jacobs as the person to take</b></p>
<p style="text-align: right;">Page 183</p> <p>1 P. Sutton</p> <p>2 '160 Patent.</p> <p>3 So this suggests that Todd was an</p> <p>4 attorney listed on the DIAMS system when</p> <p>5 there was a conversion from PATS.</p> <p>6 <b>Q. Other than that suggestion, based</b></p> <p>7 <b>upon your reading of Exhibit 8, do you have</b></p> <p>8 <b>any other evidence to show that Todd</b></p> <p>9 <b>Sharinn was carried over to the DIAMS</b></p> <p>10 <b>system?</b></p> <p>11 A. I have no evidence to suggest</p> <p>12 other than what I have said.</p> <p>13 <b>Q. Same question with respect to</b></p> <p>14 <b>yourself, you were listed as an attorney in</b></p> <p>15 <b>the patent -- excuse me, in the PATS</b></p> <p>16 <b>system, but your name does not appear on</b></p> <p>17 <b>the DIAMS record sheet.</b></p> <p>18 <b>Do you know whether your name</b></p> <p>19 <b>ever appeared on the DIAMS record sheet?</b></p> <p>20 A. I have, as I'm sitting here</p> <p>21 today, I have not seen a DIAMS sheet with</p> <p>22 my name on it relating to the '160 Patent.</p> <p>23 <b>Q. You said several times that Al</b></p> <p>24 <b>Jacobs requested to have his name placed</b></p> <p>25 <b>into this record.</b></p>	<p style="text-align: right;">Page 185</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>responsibility for Mr. Sharinn's clients?</b></p> <p>3 A. I don't recall. I may have been,</p> <p>4 but I do not recall.</p> <p>5 <b>Q. How did Matthew Tropper's name</b></p> <p>6 <b>get added to the DIAMS patent record sheet?</b></p> <p>7 A. Somebody would have indicated to</p> <p>8 the paralegal, the patent prosecution</p> <p>9 paralegal that Mr. Tropper was to be added</p> <p>10 as a working attorney on whatever matters</p> <p>11 his name was on.</p> <p>12 <b>Q. But you don't know who gave that</b></p> <p>13 <b>indication?</b></p> <p>14 A. I don't recall being present when</p> <p>15 that indication was made.</p> <p>16 <b>Q. If you'll turn to the second page</b></p> <p>17 <b>of Exhibit 8 bearing Bates number</b></p> <p>18 <b>GT-0001018, if you look there, there's a</b></p> <p>19 <b>reference to date amended 25 October 2006.</b></p> <p>20 <b>Do you see that? It's about</b></p> <p>21 <b>halfway down on the left-hand side, below</b></p> <p>22 <b>the box.</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. Do you see that?</b></p> <p>25 A. Yes.</p>

48 (Pages 186 to 189)

<p style="text-align: right;">Page 186</p> <p>1 P. Sutton</p> <p>2 <b>Q. How was this record amended on</b></p> <p>3 <b>October 25, 2006?</b></p> <p>4 A. I see reference to Phyllis Cordes</p> <p>5 on the same line and I have to go through,</p> <p>6 I'd have to go through the record to see if</p> <p>7 this updating had to do with Mr. Jacobs</p> <p>8 being added as being responsible for this</p> <p>9 client.</p> <p>10 <b>Q. What record would you have to go</b></p> <p>11 <b>through?</b></p> <p>12 A. Any papers that would shed light</p> <p>13 on amendments.</p> <p>14 <b>Q. What papers would that be?</b></p> <p>15 A. I have, I don't know because I</p> <p>16 haven't looked for them. I was not faced</p> <p>17 with this question before just now.</p> <p>18 <b>Q. Well, I mean, like e-mails or</b></p> <p>19 <b>memos, those types of papers?</b></p> <p>20 A. I don't know. That's, my point</p> <p>21 is I'm not aware of the circumstances under</p> <p>22 which this updating occurred on October 25,</p> <p>23 2006. I have no personal knowledge as to</p> <p>24 what occurred on that date. I do know that</p> <p>25 the date of amendment is after the memo</p>	<p style="text-align: right;">Page 188</p> <p>1 P. Sutton</p> <p>2 to then as well because the original notice</p> <p>3 was months ago.</p> <p>4 <b>Q. Sure.</b></p> <p>5 <b>On the first page with Exhibit 7</b></p> <p>6 <b>there is, on the front line there is a</b></p> <p>7 <b>reference to Linda Garamone?</b></p> <p>8 A. Where are you?</p> <p>9 <b>Q. On the first page.</b></p> <p>10 A. Oh, I'm sorry, yes, Linda</p> <p>11 Garamone.</p> <p>12 <b>Q. Who is that?</b></p> <p>13 A. Linda Garamone is a patent</p> <p>14 prosecution paralegal at Greenberg Traurig.</p> <p>15 <b>Q. Is she still at Greenberg</b></p> <p>16 <b>Traurig?</b></p> <p>17 A. She is.</p> <p>18 <b>Q. And what is her responsibility</b></p> <p>19 <b>with -- or strike that.</b></p> <p>20 <b>What was Ms. Garamone's</b></p> <p>21 <b>responsibility with respect to the '160</b></p> <p>22 <b>Patent?</b></p> <p>23 A. I do not know the extent of her</p> <p>24 involvement, if any, with the '160 Patent.</p> <p>25 Linda Garamone is a seasoned</p>
<p style="text-align: right;">Page 187</p> <p>1 P. Sutton</p> <p>2 entry about Mr. Jacobs.</p> <p>3 <b>Q. On the created by section there</b></p> <p>4 <b>to the right, it says PC -- do you see</b></p> <p>5 <b>where I'm at on the second page?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. And then updated by it's CORDESP.</b></p> <p>8 <b>Is that both a reference to</b></p> <p>9 <b>Phyllis Cordes?</b></p> <p>10 A. I would assume so. I can't think</p> <p>11 of anybody else's initials that are the</p> <p>12 same.</p> <p>13 <b>Q. Now, going to Exhibit 7, which I</b></p> <p>14 <b>marked earlier, Exhibit 7 for the record is</b></p> <p>15 <b>a multipage document produced by Greenberg</b></p> <p>16 <b>Traurig bearing the Bates numbers 380</b></p> <p>17 <b>through 384.</b></p> <p>18 <b>Mr. Sutton, have you seen Exhibit</b></p> <p>19 <b>7 before today?</b></p> <p>20 A. I believe I have.</p> <p>21 <b>Q. When did you last look at Exhibit</b></p> <p>22 <b>7?</b></p> <p>23 A. I believe yesterday.</p> <p>24 <b>Q. In prepping for today?</b></p> <p>25 A. Yes, but I may have seen it prior</p>	<p style="text-align: right;">Page 189</p> <p>1 P. Sutton</p> <p>2 patent prosecution paralegal who also</p> <p>3 serves as an assistant to patent attorneys</p> <p>4 in our department in New York.</p> <p>5 <b>Q. Okay.</b></p> <p>6 <b>Right underneath her name, you'll</b></p> <p>7 <b>see the file number and then it looks like</b></p> <p>8 <b>again the client matter number 518220107?</b></p> <p>9 <b>I'm still on the first page.</b></p> <p>10 A. Yes, I see that.</p> <p>11 <b>Q. Do you see that?</b></p> <p>12 A. Yes, I do.</p> <p>13 <b>Q. And then if you turn to the</b></p> <p>14 <b>second page, that document is 381, the</b></p> <p>15 <b>bottom right-hand corner, which looks like</b></p> <p>16 <b>the fax confirmation sheet --</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. In the middle of the page, do you</b></p> <p>19 <b>see where there's a header that was added</b></p> <p>20 <b>by the fax machine it looks like Greenberg</b></p> <p>21 <b>Traurig and then those numbers appear again</b></p> <p>22 <b>51822 pound 010700.</b></p> <p>23 <b>Do you see that?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. What is the significance of those</b></p>

49 (Pages 190 to 193)

<p style="text-align: right;">Page 190</p> <p>1 <b>P. Sutton</b>  2 <b>numbers being entered prior to the phone</b>  3 <b>number to which the fax was being sent?</b>  4 A. You'll note that those are the  5 client and matter numbers that we've been  6 talking about for the '160 Patent.  7 <b>Q. So is that an entry then that</b>  8 <b>allows this particular fax to be billed to</b>  9 <b>that client matter number?</b>  10 A. I'm not certain about billing and  11 fax reference numbers. That's something  12 that I'd need information from someone else  13 on. That appears to be information that  14 would be entered in the telephone, fax  15 telephone system for billing purposes.  16 <b>Q. Okay.</b>  17 <b>Going to the next page, page</b>  18 <b>number 383 -- oh, excuse me, 382.</b>  19 A. Yes.  20 <b>Q. What is this document?</b>  21 A. It's entitled, Change of  22 Correspondence Address.  23 <b>Q. And then if you look at 383, the</b>  24 <b>next page, it's entitled Fee Address</b>  25 <b>Indication Form.</b></p>	<p style="text-align: right;">Page 192</p> <p>1 <b>P. Sutton</b>  2 A. I'm not sure I understand your  3 question. The forms say what they say.  4 <b>Q. Okay.</b>  5 A. I have no personal knowledge  6 regarding this particular exhibit except to  7 recognize our IP department was originally  8 located at 200 Park Avenue, then moved to  9 885 and then moved back to 200 Park.  10 So we've had a couple of changes  11 of address for use by the Patent and  12 Trademark Office, so that we get this stuff  13 sent directly to us.  14 <b>Q. Okay.</b>  15 <b>So tell me and I'll see if I can</b>  16 <b>make this quicker, in page number 382 --</b>  17 A. Yes.  18 <b>Q. -- this is the form that Todd</b>  19 <b>Sharinn used to inform the Patent and</b>  20 <b>Trademark Office where to send all</b>  21 <b>correspondence other than fee</b>  22 <b>correspondence concerning the '160 Patent?</b>  23 A. I actually don't have personal  24 knowledge as to Exhibit 7 so that when Todd  25 is here tomorrow and testifies, he should</p>
<p style="text-align: right;">Page 191</p> <p>1 <b>P. Sutton</b>  2 <b>Do you see that?</b>  3 A. Yes.  4 <b>Q. In your experience in working</b>  5 <b>with the PTO, what is the difference</b>  6 <b>between a change of correspondence address</b>  7 <b>form and a fee address indication form?</b>  8 A. If you look a little below the  9 middle of 382, the page bearing Bates 382,  10 there is a statement on the form, this form  11 will not affect any "fee address" provided  12 for the above-identified patent.  13 To change a "fee address" use the  14 fee address indication form PTO SB-47. And  15 the following page 383 is entitled, Fee  16 Address Indication Form.  17 <b>Q. Okay.</b>  18 <b>So then the change of</b>  19 <b>correspondence address form says where to</b>  20 <b>send all correspondence other than fee</b>  21 <b>address correspondence concerning the</b>  22 <b>reference patent, and then the fee address</b>  23 <b>indication form says where to send fee</b>  24 <b>address correspondence for the reference</b>  25 <b>patent, right?</b></p>	<p style="text-align: right;">Page 193</p> <p>1 P. Sutton  2 be able to help you with this. I'm just  3 not -- I don't have any information about  4 Exhibit 7.  5 <b>Q. You're not going to read the</b>  6 <b>language in Exhibit 7 and make a --</b>  7 A. Do you want me to confirm that  8 the form says what it says?  9 <b>Q. No, I'm just wondering if you're</b>  10 <b>willing to read the form and make a</b>  11 <b>conclusion about why Todd was doing what he</b>  12 <b>was doing in this form.</b>  13 A. Your question goes to the  14 operation of the mind of Todd Sharinn who  15 is going to testify tomorrow.  16 Why would you want me to guess as  17 to what was in his mind when you'll have  18 him here tomorrow.  19 <b>Q. Well, other than the fact that</b>  20 <b>you're willing to do it earlier, I thought</b>  21 <b>that maybe you might want to do it here.</b>  22 <b>The date on the bottom of page</b>  23 <b>382, do you see that October 22, 2002?</b>  24 A. I see October 22, 2002 on that  25 page.</p>

50 (Pages 194 to 197)

<p style="text-align: right;">Page 194</p> <p>1 P. Sutton</p> <p>2 <b>Q. Okay.</b></p> <p>3 <b>If you turn to page 383 --</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. -- again on the bottom right-hand</b></p> <p>6 <b>side, do you see where Todd S. Sharinn is</b></p> <p>7 <b>printed?</b></p> <p>8 A. I see the name Todd S. Sharinn on</p> <p>9 the bottom.</p> <p>10 <b>Q. On the signature line above that</b></p> <p>11 <b>name, do you recognize that signature?</b></p> <p>12 A. No.</p> <p>13 <b>Q. The line below, there is a phone</b></p> <p>14 <b>number there beginning 212-801, do you see</b></p> <p>15 <b>that?</b></p> <p>16 A. I see that.</p> <p>17 <b>Q. Do you recognize that phone</b></p> <p>18 <b>number?</b></p> <p>19 A. I recognize the 212 and the 801</p> <p>20 as being a Greenberg Traurig number that</p> <p>21 corresponds to some Greenberg Traurig</p> <p>22 employees, but I don't recognize the 2157.</p> <p>23 <b>Q. Okay.</b></p> <p>24 <b>And then the date underneath</b></p> <p>25 <b>that, October 22, 2002, do you see that?</b></p>	<p style="text-align: right;">Page 196</p> <p>1 P. Sutton</p> <p>2 number.</p> <p>3 <b>Q. Do you have any idea why if on</b></p> <p>4 <b>April 11, 2002 Todd Sharinn was sending the</b></p> <p>5 <b>file wrapper to Mark Evens so that Mark</b></p> <p>6 <b>Evens could docket the fees, do you have</b></p> <p>7 <b>any idea why months later in October 2002</b></p> <p>8 <b>Mr. Sharinn was telling the PTO that he was</b></p> <p>9 <b>still the person to receive correspondence</b></p> <p>10 <b>about fees?</b></p> <p>11 A. I don't believe that the</p> <p>12 revocation of the Power of Attorney had</p> <p>13 occurred as yet so that technically</p> <p>14 Greenberg Traurig was still the attorney of</p> <p>15 record in that case.</p> <p>16 <b>Q. Same question with respect to</b></p> <p>17 <b>this conversation that you referenced</b></p> <p>18 <b>between Mr. Fell and Mr. Sharinn on</b></p> <p>19 <b>September 5, 2002 where Mr. Fell</b></p> <p>20 <b>purportedly told Mr. Sharinn that Thelen is</b></p> <p>21 <b>coming on to take over the case, do you</b></p> <p>22 <b>have any idea why Mr. Sharinn was filing</b></p> <p>23 <b>PTO fee address notifications after that</b></p> <p>24 <b>conversation took place?</b></p> <p>25 A. If it was, if Greenberg Traurig</p>
<p style="text-align: right;">Page 195</p> <p>1 P. Sutton</p> <p>2 A. I see those numbers, yes.</p> <p>3 <b>Q. If you turn to the last page,</b></p> <p>4 <b>page 384, the top right.</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. What is this document on page</b></p> <p>7 <b>304?</b></p> <p>8 A. This is entitled Certificate of</p> <p>9 Mailing by First Class Mail.</p> <p>10 <b>Q. And it looks like it's a</b></p> <p>11 <b>certificate from Linda Garamone certifying</b></p> <p>12 <b>that she mailed these documents to the PTO?</b></p> <p>13 A. This appears to be a certificate</p> <p>14 of mailing by first class mail that carries</p> <p>15 the name of Linda Garamone in typed</p> <p>16 lettering with a signature below.</p> <p>17 <b>Q. Do you recognize Ms. Garamone's</b></p> <p>18 <b>signature?</b></p> <p>19 A. I don't recognize her signature,</p> <p>20 no.</p> <p>21 <b>Q. Up on the top right-hand corner</b></p> <p>22 <b>of this last page, 384, you'll see again</b></p> <p>23 <b>the client matter number that Greenberg</b></p> <p>24 <b>established for Quickie.</b></p> <p>25 A. I see that under the title docket</p>	<p style="text-align: right;">Page 197</p> <p>1 P. Sutton</p> <p>2 was still attorney of record until its</p> <p>3 power was revoked we would want the pat at</p> <p>4 any time and trademark office to have a</p> <p>5 correct address to send correspondence. So</p> <p>6 that would be one reason to file such a</p> <p>7 notice.</p> <p>8 <b>Q. Well, wasn't the purpose of the</b></p> <p>9 <b>file wrapper being sent to Thelen so that</b></p> <p>10 <b>they could start monitoring and docketing</b></p> <p>11 <b>the deadlines, isn't that what you</b></p> <p>12 <b>testified to earlier?</b></p> <p>13 A. I don't understand why what you</p> <p>14 just said conflicts with what I just said.</p> <p>15 I don't understand. Your question suggests</p> <p>16 some conflict. I just don't understand.</p> <p>17 If Greenberg Traurig was still</p> <p>18 the attorney of record and wished to have a</p> <p>19 correct address at the Patent and Trademark</p> <p>20 Office to receive mail from the Patent and</p> <p>21 Trademark Office until its power was</p> <p>22 revoked. The fact that Mark Evens could or</p> <p>23 should have been entering data in the</p> <p>24 Thelen docketing system would have nothing</p> <p>25 to do with the formal notices until the</p>



51 (Pages 198 to 201)

<p style="text-align: right;">Page 198</p> <p>1 P. Sutton</p> <p>2 Power of Attorney was revoked.</p> <p>3 So I don't understand your</p> <p>4 question, frankly.</p> <p>5 <b>Q. Okay.</b></p> <p>6 <b>Maybe it was an unclear question.</b></p> <p>7 <b>We can move it along.</b></p> <p>8 <b>But am I correct in understanding</b></p> <p>9 <b>then that you would agree that at least as</b></p> <p>10 <b>of October 22, 2002 Todd Sharinn was the</b></p> <p>11 <b>attorney or agent of record for what</b></p> <p>12 <b>Greenberg has set up as client matter</b></p> <p>13 <b>number or matter number 0107, which is the</b></p> <p>14 <b>'160 Patent?</b></p> <p>15 A. You'll have to show me the appear</p> <p>16 I can't say on the '160 Patent so I can see</p> <p>17 whose name --</p> <p>18 <b>Q. The appearance?</b></p> <p>19 A. If I understand your question</p> <p>20 correctly, you're asking me if Todd</p> <p>21 Sharinn's -- maybe I don't understand your</p> <p>22 question.</p> <p>23 <b>Q. Okay.</b></p> <p>24 <b>Well, let's look back at Exhibit</b></p> <p>25 <b>7.</b></p>	<p style="text-align: right;">Page 200</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>with a registration number 42144?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. Do you know that to be Todd</b></p> <p>5 <b>Sharinn's registration number?</b></p> <p>6 A. No, I don't.</p> <p>7 <b>Q. So then would you agree or</b></p> <p>8 <b>disagree with me that as of October 22,</b></p> <p>9 <b>2002 Todd Sharinn was the attorney or agent</b></p> <p>10 <b>of record for what Greenberg has</b></p> <p>11 <b>established as client matter number</b></p> <p>12 <b>518220107, the '160 Patent?</b></p> <p>13 A. I'm unable to give you that</p> <p>14 information because I'm just not, I don't</p> <p>15 have information in front of me to state</p> <p>16 under oath that that's the case.</p> <p>17 <b>Q. What other information would you</b></p> <p>18 <b>want to look at to confirm whether that's</b></p> <p>19 <b>the case?</b></p> <p>20 A. I invite you to show me whatever</p> <p>21 you'd like to.</p> <p>22 <b>Q. I don't have any other</b></p> <p>23 <b>information. What I've got is what you've</b></p> <p>24 <b>got.</b></p> <p>25 A. Okay. Well, you've --</p>
<p style="text-align: right;">Page 199</p> <p>1 <b>P. Sutton</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. Page number 382.</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. I believe it's the third one into</b></p> <p>6 <b>the document.</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Todd Sharinn's name is printed,</b></p> <p>9 <b>and then I assume that's Todd Sharinn's</b></p> <p>10 <b>signature and then a date of October</b></p> <p>11 <b>22nd --</b></p> <p>12 A. I don't know that to be his</p> <p>13 signature.</p> <p>14 <b>Q. I know that, we'll find that out</b></p> <p>15 <b>tomorrow, but assume for purposes of today</b></p> <p>16 <b>that that's his signature -- above there</b></p> <p>17 <b>you see attorney or agent of record has an</b></p> <p>18 <b>X mark placed, do you see that?</b></p> <p>19 A. I'm sorry.</p> <p>20 MR. CHU: He's talking about</p> <p>21 there.</p> <p>22 A. Okay, yes, I see, okay.</p> <p>23 <b>Q. And then if you look on page 383,</b></p> <p>24 <b>again down at the bottom the signature</b></p> <p>25 <b>block attorney or agent of record is marked</b></p>	<p style="text-align: right;">Page 201</p> <p>1 P. Sutton</p> <p>2 <b>Q. So I'm not holding anything back</b></p> <p>3 <b>from you.</b></p> <p>4 A. Okay, so you have Todd Sharinn</p> <p>5 tomorrow to confirm all of that for you.</p> <p>6 Again, I'm just not familiar with Exhibit</p> <p>7 Number 7.</p> <p>8 <b>Q. Do you have any reason to believe</b></p> <p>9 <b>that he was not the agent of record for</b></p> <p>10 <b>that client matter?</b></p> <p>11 A. I don't have enough information</p> <p>12 to form a belief or opinion or to reach a</p> <p>13 conclusion at this point.</p> <p>14 <b>Q. As the corporate representative</b></p> <p>15 <b>for Greenberg Traurig, Mr. Sutton, do you</b></p> <p>16 <b>have any reason to doubt the authenticity</b></p> <p>17 <b>of the documents contained in Exhibit 7?</b></p> <p>18 A. I repeat, I don't have enough</p> <p>19 information to form a belief or to give you</p> <p>20 testimony under oath with respect to</p> <p>21 Exhibit Number 7, but I believe Mr. Sharinn</p> <p>22 tomorrow will be able to shed light on this</p> <p>23 because I'm just not familiar with it.</p> <p>24 MR. SCOTT: Off the record.</p> <p>25 (Whereupon, an off-the-record</p>

52 (Pages 202 to 205)

<p style="text-align: right;">Page 202</p> <p>1 P. Sutton</p> <p>2 discussion was held.)</p> <p>3 BY MR. LODEN:</p> <p>4 <b>Q. We were talking about Exhibit 7.</b></p> <p>5 <b>My question was --</b></p> <p>6 MR. CHU: Let him ask a question.</p> <p>7 <b>Q. As the corporate representative</b></p> <p>8 <b>for Greenberg Traurig, Mr. Sutton, do you</b></p> <p>9 <b>have any reason to doubt the authenticity</b></p> <p>10 <b>of the documents contained in Exhibit 7?</b></p> <p>11 MR. CHU: Let me just object. I</p> <p>12 don't know if he is in fact the</p> <p>13 corporate representative, but I have</p> <p>14 no objection to him answering what you</p> <p>15 asked.</p> <p>16 A. I have no information to the</p> <p>17 contrary.</p> <p>18 <b>Q. So as you sit here today then,</b></p> <p>19 <b>you have no information to suggest that</b></p> <p>20 <b>Todd Sharinn was not the attorney or agent</b></p> <p>21 <b>of record for the '160 Patent, the client</b></p> <p>22 <b>matter 518220107 as of October 22, 2002?</b></p> <p>23 MR. CHU: Objection. That's a</p> <p>24 different question, but again, I'm not</p> <p>25 saying he shouldn't answer. As best</p>	<p style="text-align: right;">Page 204</p> <p>1 <b>P. Sutton</b></p> <p>2 A. I just don't recall whether or</p> <p>3 not I was involved in the interviewing of</p> <p>4 Todd Sharinn.</p> <p>5 <b>Q. Do you recall how Todd Sharinn</b></p> <p>6 <b>came to apply at Greenberg Traurig?</b></p> <p>7 A. Are you asking why he applied for</p> <p>8 the job at Greenberg Traurig?</p> <p>9 <b>Q. No.</b></p> <p>10 <b>What I'm asking is how did he</b></p> <p>11 <b>find out about the job at Greenberg</b></p> <p>12 <b>Traurig, did he just submit a resume or</b></p> <p>13 <b>does he know someone or --</b></p> <p>14 A. I do not know the circumstances</p> <p>15 of why Mr. Sharinn or how he approached</p> <p>16 Greenberg Traurig.</p> <p>17 <b>Q. Okay.</b></p> <p>18 <b>Other than Quickie or really</b></p> <p>19 <b>other than Dr. Colvin, did Mr. Sharinn</b></p> <p>20 <b>bring any other clients to Greenberg</b></p> <p>21 <b>Traurig when he was hired?</b></p> <p>22 A. You mentioned Dr. Colvin as a</p> <p>23 client.</p> <p>24 Could you show me where --</p> <p>25 <b>Q. Well, strike that.</b></p>
<p style="text-align: right;">Page 203</p> <p>1 P. Sutton</p> <p>2 as he knows.</p> <p>3 BY MR. LODEN:</p> <p>4 <b>Q. I'm just asking if you have any</b></p> <p>5 <b>information suggesting that is not the</b></p> <p>6 <b>case.</b></p> <p>7 A. I have no information that would</p> <p>8 contradict what is contained in Exhibit 7.</p> <p>9 <b>Q. Did you interview Todd Sharinn</b></p> <p>10 <b>what he was hired by Greenberg Traurig?</b></p> <p>11 A. When he was hired, did you say?</p> <p>12 <b>Q. Yes.</b></p> <p>13 A. I don't recall.</p> <p>14 <b>Q. In response to interrogatory</b></p> <p>15 <b>number 9 you stated that Mr. Sharinn was</b></p> <p>16 <b>employed on May 14, 2001. I'm just giving</b></p> <p>17 <b>you the date to see if that jogs your</b></p> <p>18 <b>memory.</b></p> <p>19 A. What page is that?</p> <p>20 <b>Q. Page 5 of Exhibit 6.</b></p> <p>21 A. May 14, 2001?</p> <p>22 <b>Q. Right.</b></p> <p>23 <b>Does that refresh your</b></p> <p>24 <b>recollection as to whether you were</b></p> <p>25 <b>involved in interviewing him?</b></p>	<p style="text-align: right;">Page 205</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>Other than Quickie did Todd</b></p> <p>3 <b>Sharinn bring any other clients with him to</b></p> <p>4 <b>Greenberg Traurig?</b></p> <p>5 A. I don't recall if or whether he</p> <p>6 did.</p> <p>7 <b>Q. Were you involved in the transfer</b></p> <p>8 <b>of files from Todd's old firm Pepe &amp; Hazard</b></p> <p>9 <b>to Greenberg Traurig?</b></p> <p>10 A. I was not personally involved in</p> <p>11 the physical transfer of those files.</p> <p>12 <b>Q. Well, did you have any role at</b></p> <p>13 <b>all in the transfer of those files?</b></p> <p>14 A. I don't recall the extent of my</p> <p>15 involvement therein, if any, except that I</p> <p>16 have testified earlier regarding assisting</p> <p>17 in the transition of files and information</p> <p>18 to the GT docketing system.</p> <p>19 <b>Q. Files and information -- okay, I</b></p> <p>20 <b>understand what you're referring to now,</b></p> <p>21 <b>I'm sorry.</b></p> <p>22 <b>Have you ever had one of your</b></p> <p>23 <b>clients leave the firm in which you were</b></p> <p>24 <b>employed and hire other lawyers?</b></p> <p>25 A. Yes.</p>



53 (Pages 206 to 209)

<p style="text-align: right;">Page 206</p> <p>1 P. Sutton</p> <p>2 <b>Q. Was that while you were at Thelen</b></p> <p>3 <b>Reid, Greenberg Traurig or some other firm?</b></p> <p>4 A. It has occurred at Greenberg</p> <p>5 Traurig and I don't recall whether or not</p> <p>6 or if it had occurred at Thelen.</p> <p>7 <b>Q. I'm not going to ask for</b></p> <p>8 <b>specifics about the client, but what type</b></p> <p>9 <b>of representation was it, patent</b></p> <p>10 <b>prosecution, patent infringement litigation</b></p> <p>11 <b>or some other litigation or what?</b></p> <p>12 A. Patent prosecution and patent</p> <p>13 litigation matters have been transferred to</p> <p>14 one or more other firms.</p> <p>15 <b>Q. And did that transfer occur while</b></p> <p>16 <b>the patent and litigation was pending, in</b></p> <p>17 <b>other words, a case was already on file?</b></p> <p>18 A. Yes, that has occurred.</p> <p>19 <b>Q. And we're not talking about the</b></p> <p>20 <b>Quickie versus Medtronic litigation, we're</b></p> <p>21 <b>talking about something else, right, or</b></p> <p>22 <b>you're talking about something else, right?</b></p> <p>23 A. I'm not talking about Quickie.</p> <p>24 <b>Q. Okay.</b></p> <p>25 A. Clients come, clients go,</p>	<p style="text-align: right;">Page 208</p> <p>1 <b>P. Sutton</b></p> <p>2 A. I think your question requires me</p> <p>3 to go into attorney-client communications</p> <p>4 between myself and that non-Quickie client,</p> <p>5 so I'm not sure I'm permitted to do that.</p> <p>6 <b>Q. Well, was it a letter, was it an</b></p> <p>7 <b>oral conversation? I'm not asking about</b></p> <p>8 <b>the substance, just how the conversation</b></p> <p>9 <b>took place.</b></p> <p>10 A. At least an oral communication.</p> <p>11 <b>Q. And then when the case was</b></p> <p>12 <b>actually transferred, was there a written</b></p> <p>13 <b>communication that went with the transfer?</b></p> <p>14 A. I believe so.</p> <p>15 <b>Q. And who authored that written</b></p> <p>16 <b>correspondence?</b></p> <p>17 A. I don't know as I'm sitting here</p> <p>18 today. It was likely a paralegal writing</p> <p>19 to a counterpart or an attorney at the firm</p> <p>20 taking over responsibility.</p> <p>21 <b>Q. Was that a matter for which</b></p> <p>22 <b>Greenberg was docketing and monitoring</b></p> <p>23 <b>maintenance fee deadlines on the patent at</b></p> <p>24 <b>issue?</b></p> <p>25 A. I don't recall, but I don't</p>
<p style="text-align: right;">Page 207</p> <p>1 P. Sutton</p> <p>2 especially with downward pressure on fees.</p> <p>3 <b>Q. Understood.</b></p> <p>4 <b>The instance that you're</b></p> <p>5 <b>referring to that the patent prosecution</b></p> <p>6 <b>and patent litigation matters being</b></p> <p>7 <b>transferred to another firm, were you</b></p> <p>8 <b>personally involved in that transfer?</b></p> <p>9 A. I'm not sure I understand what</p> <p>10 you mean.</p> <p>11 <b>Q. Well, I'm referring to the</b></p> <p>12 <b>specific example other than Quickie that</b></p> <p>13 <b>you're saying that while you were at</b></p> <p>14 <b>Greenberg Traurig a client, patent</b></p> <p>15 <b>prosecution, patent litigation client chose</b></p> <p>16 <b>to hire other counsel for pending</b></p> <p>17 <b>litigation.</b></p> <p>18 <b>Are you with me there?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Okay.</b></p> <p>21 <b>So in the choice -- well, let me</b></p> <p>22 <b>be more basic than that.</b></p> <p>23 <b>How did find out that the client</b></p> <p>24 <b>had decided to hire other lawyers in that</b></p> <p>25 <b>instance?</b></p>	<p style="text-align: right;">Page 209</p> <p>1 P. Sutton</p> <p>2 believe so. I believe that what I recall</p> <p>3 are a patent application which had not</p> <p>4 issued to generate maintenance fee</p> <p>5 deadlines.</p> <p>6 <b>Q. Have you ever had a client leave</b></p> <p>7 <b>for whom you were monitoring deadlines?</b></p> <p>8 A. I don't recall any.</p> <p>9 <b>Q. Would you agree with me that when</b></p> <p>10 <b>a client is transferred to another firm</b></p> <p>11 <b>that it's preferable to rely on, actually</b></p> <p>12 <b>have written communications for the</b></p> <p>13 <b>transfer as opposed to just verbal</b></p> <p>14 <b>communications about the transfer?</b></p> <p>15 A. I think the instance that we're</p> <p>16 involved in you have verbal or oral</p> <p>17 communications from Alan Fell to Todd</p> <p>18 Sharinn, you have oral communications</p> <p>19 between Mark Evens, myself and Mark Evens</p> <p>20 and Todd Sharinn, you have a substitute and</p> <p>21 revocation Power of Attorney -- I think all</p> <p>22 of those are means of communicating a</p> <p>23 transfer of authority and responsibility to</p> <p>24 a new firm.</p> <p>25 <b>Q. But looking back when you're</b></p>

54 (Pages 210 to 213)

<p style="text-align: right;">Page 210</p> <p>1 <b>P. Sutton</b>  2 <b>trying to figure out what was actually</b>  3 <b>transferred and what occurred, I mean,</b>  4 <b>you're a litigator, wouldn't you rather</b>  5 <b>have a written document as opposed to</b>  6 <b>relying on oral conversations?</b>  7 A. I'm not certain that that would  8 be relevant as a litigator. So I don't  9 know, I haven't considered that question.  10 <b>Q. Have you ever transferred a</b>  11 <b>client to another law firm without having a</b>  12 <b>written letter confirming the transfer and</b>  13 <b>what's being transferred?</b>  14 A. I'd have to investigate to see  15 whether that's the case or not.  16 <b>Q. As you sit here today, nothing</b>  17 <b>comes to mind?</b>  18 A. I don't want to guess one way or  19 another.  20 <b>Q. In your practice, have you,</b>  21 <b>yourself, ever written a letter to new</b>  22 <b>lawyers for a former client saying the case</b>  23 <b>is now being transferred to you?</b>  24 A. What I recall is asking the  25 client to write the letter to the new firm</p>	<p style="text-align: right;">Page 212</p> <p>1 <b>P. Sutton</b>  2 <b>confusion later down the road?</b>  3 A. In circumstances such as the one  4 that's in litigation that I'm giving  5 testimony in, months and months prior to  6 transfer of files or revocation of the  7 Power of Attorney, the new law firm was  8 given all information that it needed or  9 could possibly want in connection with  10 assuming responsibility so that whether or  11 not it did anything with that information  12 is another matter, but in effect in the  13 present circumstances Mark Evens began the  14 assumption of responsibility even prior to  15 Allan Fell telling Todd Sharinn that our  16 firm was being replaced and our power was  17 going to be revoked because Mark Evens was  18 actually sitting at the table in the  19 Markman Hearing and he wasn't an attorney  20 of record.  21 So that process began at least as  22 early as April 11, 2002 where Mark Evens  23 was monitoring and had information and had  24 the ability to enter any and all deadlines  25 in the system at Thelen.</p>
<p style="text-align: right;">Page 211</p> <p>1 P. Sutton  2 or to me giving instructions, because I  3 don't really have the authority to ask a  4 firm with a Power of Attorney to transfer  5 the files to me, it's the client that calls  6 that shot.  7 So really, what I rely upon over  8 the years is the client writing so that the  9 law firm has instructions from the party  10 who really has the authority to give those  11 instructions.  12 <b>Q. But once you get those</b>  13 <b>instructions, when you comply with those</b>  14 <b>instructions and actually transfer the</b>  15 <b>files, don't you include a cover letter</b>  16 <b>saying pursuant to the instructions here is</b>  17 <b>what's being transferred?</b>  18 A. I recall having done that in the  19 past.  20 <b>Q. And what sorts of -- would you --</b>  21 <b>well, strike that.</b>  22 <b>Would you agree with me in that</b>  23 <b>communication that it's important to</b>  24 <b>identify the matters that are being</b>  25 <b>transferred to the new lawyer so there's no</b></p>	<p style="text-align: right;">Page 213</p> <p>1 P. Sutton  2 MR. LODEN: Objection.  3 Nonresponsive. Move to strike.  4 BY MR. LODEN:  5 <b>Q. My question was much more simple</b>  6 <b>than that.</b>  7 <b>My question was: Would you agree</b>  8 <b>with me that in the communication</b>  9 <b>transferring the files to the new lawyer</b>  10 <b>that it's important to identify the matters</b>  11 <b>that are being transferred so there is no</b>  12 <b>confusion down the road?</b>  13 A. I'm unable to answer that  14 question right now.  15 <b>Q. Why?</b>  16 A. I don't know the answer to the  17 question and I have to think about that  18 question.  19 <b>Q. When will you know the answer to</b>  20 <b>that question?</b>  21 A. I'm not certain. I have to think  22 about that because it's a loaded question  23 that you ask with a smile, so that it's  24 clear I want to think about that question  25 before I give you any kind of a response.</p>

55 (Pages 214 to 217)

<p style="text-align: right;">Page 214</p> <p>1 P. Sutton 2 I just don't have a response for you right 3 now. 4 <b>Q. See, that's the problem, you've</b> 5 <b>been designated as a witness today to</b> 6 <b>answer our questions, I've asked what is a</b> 7 <b>very clear question that you've clearly</b> 8 <b>understood because you've interpreted my</b> 9 <b>meaning in asking it and you've said that</b> 10 <b>you're not prepared to answer it now</b> 11 <b>because it's a loaded question and you want</b> 12 <b>to think about it --</b> 13 A. Right. 14 <b>Q. -- there is a question pending on</b> 15 <b>the table, we can, I'll just stop talking</b> 16 <b>and you let me know when you're done</b> 17 <b>thinking about it and then I'll get your</b> 18 <b>answer.</b> 19 A. You have no other questions 20 besides this one? 21 <b>Q. I'm willing to -- based upon your</b> 22 <b>testimony that you're going to need the</b> 23 <b>time that you need to think about the</b> 24 <b>answer, we'll take the time that you need</b> 25 <b>to answer it and then we'll go on to the</b></p>	<p style="text-align: right;">Page 216</p> <p>1 P. Sutton 2 to my prior answer as well. 3 <b>Q. What about pending deadlines in</b> 4 <b>the matter that's being transferred, should</b> 5 <b>those be mentioned?</b> 6 MR. CHU: Well, you're asking, 7 you know -- 8 MR. LODEN: I'm sorry, was that 9 an objection? 10 A. There are instances where pending 11 deadlines, especially if they are imminent 12 where it is desirable, not under the 13 present circumstances with the Quickie 14 matter however. 15 <b>Q. And who determined that it was</b> 16 <b>not desirable under present circumstances</b> 17 <b>with the Quickie matter that it was not</b> 18 <b>desirable to reference pending deadlines,</b> 19 <b>who made that determination?</b> 20 A. I think you assume a fact not in 21 evidence. So I -- 22 <b>Q. What assumption is that?</b> 23 A. That there was a determination. 24 I think the determination was made by the 25 client in revoking well prior to the</p>
<p style="text-align: right;">Page 215</p> <p>1 <b>P. Sutton</b> 2 <b>rest of my questions.</b> 3 MR. SCOTT: Well, again, let's 4 just go off the record rather than 5 having colloquy. 6 MR. LODEN: Well, I don't want to 7 go off the record because then Justin 8 and the witness are going to talk 9 about -- 10 MR. SCOTT: I think you got your 11 record. Let's just go off for a 12 second. 13 (Whereupon, an off-the-record 14 discussion was held.) 15 (Whereupon, the requested portion 16 was read back by the court reporter.) 17 A. There are instances where that is 18 desirable. 19 <b>Q. And would you agree with me that</b> 20 <b>there are also instances where it's</b> 21 <b>desirable to identify the actual files that</b> 22 <b>are being transferred to the new lawyer?</b> 23 A. There are instances where that is 24 desirable. There are instances where it is 25 unnecessary. I should add the unnecessary</p>	<p style="text-align: right;">Page 217</p> <p>1 P. Sutton 2 deadline the Power of Attorney so that the 3 client made that decision and Mark Evens 4 made the decision or Thelen made the 5 decision not to pay timely that maintenance 6 fee. 7 <b>Q. Did Quickie say Mr. Sutton, I</b> 8 <b>want you to transfer the files and I don't</b> 9 <b>want you to tell them what the deadlines</b> 10 <b>are for maintenance fees?</b> 11 A. It's clear from the revocation 12 that the client wanted us not to be 13 involved in any way any further, and the 14 revocation was not partial, it was 15 complete, and the client had the benefit of 16 counsel other than Greenberg Traurig who 17 had the knowledge and the ability and the 18 wherewithal to pay the maintenance fee and 19 to docket it, namely Alan Fell, Steve 20 Colvin himself who was a very sharp 21 individual, Mark Evens and people at Thelen 22 and then there's the issue of Maier &amp; Maier 23 could in my view have reinstated that 24 patent so that it was not lapsed. 25 MR. LODEN: Objection.</p>

56 (Pages 218 to 221)

<p style="text-align: right;">Page 218</p> <p>1 P. Sutton</p> <p>2 Nonresponsive. Move to strike.</p> <p>3 BY MR. LODEN:</p> <p>4 <b>Q. My question was very simple</b></p> <p>5 <b>again. I'll reread it to you.</b></p> <p>6 <b>Did Quickie say Mr. Sutton, I</b></p> <p>7 <b>want you to transfer the files and I don't</b></p> <p>8 <b>want you to tell them what the deadlines</b></p> <p>9 <b>are for maintenance fees? Did Quickie ever</b></p> <p>10 <b>say that to you?</b></p> <p>11 A. I don't recall anyone at Quickie</p> <p>12 telling me, using those words in any</p> <p>13 conversation with me.</p> <p>14 <b>Q. Have you ever heard that those</b></p> <p>15 <b>words were used in a conversation with Todd</b></p> <p>16 <b>Sharinn?</b></p> <p>17 A. I have no personal information</p> <p>18 one way or another, but I do, it is clear</p> <p>19 that well prior to the maintenance fee</p> <p>20 deadline, the initial deadline which</p> <p>21 payment could be made thereafter that</p> <p>22 Thelen for many months had the information,</p> <p>23 could have and should have had the</p> <p>24 information in its docketing system and</p> <p>25 could have and should have paid that</p>	<p style="text-align: right;">Page 220</p> <p>1 P. Sutton</p> <p>2 responsive.</p> <p>3 <b>Q. Okay.</b></p> <p>4 <b>Well, let's break it down then.</b></p> <p>5 <b>You said the client told Thelen</b></p> <p>6 <b>that. Were you present for that</b></p> <p>7 <b>conversation?</b></p> <p>8 A. There was a Power of Attorney</p> <p>9 that was done in written form with a Power</p> <p>10 of Attorney.</p> <p>11 <b>Q. So when you say that the client</b></p> <p>12 <b>told Thelen that they were responsible,</b></p> <p>13 <b>that answer was based on your reading of</b></p> <p>14 <b>the written Power of Attorney?</b></p> <p>15 A. And the fact that Thelen would</p> <p>16 have gotten a copy of that. The client</p> <p>17 would not have sent the revocation of the</p> <p>18 Power of Attorney without first having</p> <p>19 consulted Thelen.</p> <p>20 <b>Q. But other than your reading of</b></p> <p>21 <b>the Power of Attorney, you have no other</b></p> <p>22 <b>facts within your personal knowledge</b></p> <p>23 <b>indicating that Quickie asked Thelen to</b></p> <p>24 <b>monitor deadlines for the maintenance fees?</b></p> <p>25 A. I'm taking all of the facts and</p>
<p style="text-align: right;">Page 219</p> <p>1 P. Sutton</p> <p>2 maintenance fee.</p> <p>3 MR. LODEN: Object to the</p> <p>4 nonresponsive part of that answer.</p> <p>5 Move to strike.</p> <p>6 I'll ask the reporter to mark</p> <p>7 Exhibit 9.</p> <p>8 (Exhibit 9, Client Matter Intake</p> <p>9 Memorandum, marked for identification,</p> <p>10 as of this date.)</p> <p>11 BY MR. LODEN:</p> <p>12 <b>Q. Before we get to Exhibit 9, one</b></p> <p>13 <b>question from the previous topic. I'll try</b></p> <p>14 <b>to make it as simple as possible so we</b></p> <p>15 <b>don't dwell on it a lot, but did you,</b></p> <p>16 <b>Mr. Sutton, ever tell anyone at Thelen that</b></p> <p>17 <b>Thelen is now responsible for monitoring</b></p> <p>18 <b>maintenance fees on the '160 Patent?</b></p> <p>19 A. The client did and the Patent and</p> <p>20 Trademark Office did. There was no reason</p> <p>21 for me to repeat that. In addition, they</p> <p>22 already had that information in hand.</p> <p>23 <b>Q. So the answer is no, you,</b></p> <p>24 <b>yourself, never told anyone at Thelen that?</b></p> <p>25 A. My answer stands as being fully</p>	<p style="text-align: right;">Page 221</p> <p>1 P. Sutton</p> <p>2 circumstances of all the documents and the</p> <p>3 matters I've reviewed to reach that</p> <p>4 conclusion.</p> <p>5 <b>Q. But those facts and circumstances</b></p> <p>6 <b>do not include a conversation in which you</b></p> <p>7 <b>were personally involved, an oral</b></p> <p>8 <b>conversation in which you were personally</b></p> <p>9 <b>involved, correct?</b></p> <p>10 A. I do not recall any instance</p> <p>11 where I was present where there was a</p> <p>12 communication between Quickie and Mark</p> <p>13 Evens involving their responsibilities.</p> <p>14 <b>Q. Exhibit 9, do you recognize the</b></p> <p>15 <b>3-page document in Exhibit 9, Mr. Sutton?</b></p> <p>16 A. I recognize the type of document</p> <p>17 that it is.</p> <p>18 <b>Q. What type of document is this?</b></p> <p>19 A. This is a Greenberg Traurig</p> <p>20 client matter intake memorandum.</p> <p>21 <b>Q. Is this a standard form that</b></p> <p>22 <b>Greenberg Traurig uses in its legal</b></p> <p>23 <b>practice?</b></p> <p>24 A. This is a form that has been used</p> <p>25 by Greenberg Traurig, Exhibit 9 has been</p>

57 (Pages 222 to 225)

<p style="text-align: right;">Page 222</p> <p>1 P. Sutton</p> <p>2 the form has been used by Greenberg Traurig</p> <p>3 on, in connection with the intake of</p> <p>4 matters.</p> <p>5 <b>Q. So that's a yes.</b></p> <p>6 <b>This is the initial client matter</b></p> <p>7 <b>intake form for Quickie, LLC, correct?</b></p> <p>8 A. I don't know that it's the</p> <p>9 initial intake form or not, but it is an</p> <p>10 intake client matter intake memorandum</p> <p>11 involving Quickie, LLC with a date of July</p> <p>12 30, 2001 appearing on it.</p> <p>13 <b>Q. And up at the top it's the new</b></p> <p>14 <b>client box is checked.</b></p> <p>15 <b>Do you see that?</b></p> <p>16 A. I see an X in that box.</p> <p>17 <b>Q. So that means that prior to July</b></p> <p>18 <b>30, 2001 Quickie was not a client of</b></p> <p>19 <b>Greenberg?</b></p> <p>20 A. I don't know that to be the case</p> <p>21 or not. I have no personal information one</p> <p>22 way or another.</p> <p>23 <b>Q. And then you see under Roman</b></p> <p>24 <b>Numeral II, matter information there is a</b></p> <p>25 <b>handwritten notation 51822.01?</b></p>	<p style="text-align: right;">Page 224</p> <p>1 P. Sutton</p> <p>2 <b>Q. Was he listed as the billing</b></p> <p>3 <b>attorney because he's a shareholder?</b></p> <p>4 A. That's possible. I believe at</p> <p>5 that time Todd Sharinn was associate and</p> <p>6 not a shareholder -- and not -- an</p> <p>7 associate -- sorry, that Todd Sharinn was</p> <p>8 an associate and neither of counsel or a</p> <p>9 shareholder.</p> <p>10 <b>Q. Turning to the second page, page</b></p> <p>11 <b>number 699 on it, under Roman Numeral IV,</b></p> <p>12 <b>fee arrangement, question number 19 says is</b></p> <p>13 <b>a representation agreement letter in place.</b></p> <p>14 <b>Do you see that?</b></p> <p>15 A. I see a box next to the word no</p> <p>16 with an X in it.</p> <p>17 <b>Q. Are you aware of any</b></p> <p>18 <b>representation agreement letter in place</b></p> <p>19 <b>with respect to client matter number</b></p> <p>20 <b>51822.0100?</b></p> <p>21 A. I have no personal information</p> <p>22 one way or another.</p> <p>23 <b>Q. You just don't know if one exists</b></p> <p>24 <b>or not?</b></p> <p>25 A. I have no information one way or</p>
<p style="text-align: right;">Page 223</p> <p>1 P. Sutton</p> <p>2 A. I see that.</p> <p>3 <b>Q. Do you see that?</b></p> <p>4 A. I see that number handwritten.</p> <p>5 <b>Q. What is that number? Is that a</b></p> <p>6 <b>client matter number?</b></p> <p>7 A. That appears to be a Greenberg</p> <p>8 Traurig client number to the left of the</p> <p>9 decimal point and to the right it appears</p> <p>10 to be the beginning of a matter number.</p> <p>11 <b>Q. Just the beginning? Do you think</b></p> <p>12 <b>it's incomplete?</b></p> <p>13 A. It appears to be the first two of</p> <p>14 six digits, so that the matter number would</p> <p>15 be 010000, but that's how I interpret this.</p> <p>16 <b>Q. Looking down under Roman Numeral</b></p> <p>17 <b>III, billing information, the billing</b></p> <p>18 <b>attorney is listed as Harlin -- Harley</b></p> <p>19 <b>Lewan, do you see that?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. Who is Harley Lewan?</b></p> <p>22 A. Harley Lewan is a shareholder of</p> <p>23 Greenberg Traurig.</p> <p>24 <b>Q. Still present at Greenberg?</b></p> <p>25 A. He is.</p>	<p style="text-align: right;">Page 225</p> <p>1 P. Sutton</p> <p>2 another, no personal information.</p> <p>3 <b>Q. Under Roman Numeral V, conflicts,</b></p> <p>4 <b>a reference is a conflict search being run</b></p> <p>5 <b>on August 1, 2001.</b></p> <p>6 <b>Do you see that?</b></p> <p>7 A. I see that. I see the date</p> <p>8 August 1, 2001.</p> <p>9 <b>Q. And then if you look on line 21,</b></p> <p>10 <b>it says, "Describe any potential business</b></p> <p>11 <b>conflicts and status of waiver."</b></p> <p>12 <b>Do you see that?</b></p> <p>13 A. I do.</p> <p>14 <b>Q. Does Greenberg have, for lack of</b></p> <p>15 <b>a better term, a two-part conflicts for new</b></p> <p>16 <b>clients where it checks the ethical legal</b></p> <p>17 <b>conflicts as well as potential business</b></p> <p>18 <b>conflicts for new matters?</b></p> <p>19 A. Greenberg Traurig considers on</p> <p>20 intake of new matters whether there are</p> <p>21 ethical conflicts and it also considers</p> <p>22 whether or not there are any potential</p> <p>23 business conflicts.</p> <p>24 <b>Q. In other words, Greenberg might</b></p> <p>25 <b>not want to take on a client if that client</b></p>

58 (Pages 226 to 229)

<p style="text-align: right;">Page 226</p> <p>1 <b>P. Sutton</b>  2 <b>would present a conflict with a position</b>  3 <b>that another client is taking in another</b>  4 <b>case or --</b>  5 A. Greenberg Traurig on intake of a  6 new matter may decline representation in  7 that new matter because of an actual or a  8 potential business conflict.  9 <b>Q. Underline 23, billing attorney</b>  10 <b>signature, do you recognize that signature</b>  11 <b>there?</b>  12 A. I don't.  13 <b>Q. Under 24, intake committee member</b>  14 <b>signature, do you see that?</b>  15 A. I do.  16 <b>Q. Do you recognize that signature?</b>  17 A. I don't recognize the signature,  18 but it appears to spell out the name Albert  19 Jacobs.  20 <b>Q. What is the intake committee at</b>  21 <b>Greenberg Traurig?</b>  22 A. There are relatively senior  23 shareholders whose approval is required to  24 sign off on client matter intake memoranda.  25 <b>Q. Why is there approval required?</b></p>	<p style="text-align: right;">Page 228</p> <p>1 P. Sutton  2 but it is the standard practice at my firm  3 Greenberg Traurig today to have engagement  4 letters of record as new matters and new  5 clients come in.  6 <b>Q. Was that the standard practice at</b>  7 <b>Greenberg Traurig on July 30, 2001?</b>  8 A. I don't recall right now, but I  9 believe that there were instances -- I  10 don't recall, I'd rather not guess.  11 <b>Q. Well, in the instances where</b>  12 <b>there wasn't a written engagement letter,</b>  13 <b>you referenced earlier a handshake --</b>  14 A. That's in my practice prior to  15 joining Greenberg Traurig.  16 <b>Q. Okay.</b>  17 <b>Well, are you aware of clients of</b>  18 <b>Greenberg Traurig for which there is no</b>  19 <b>written engagement letter?</b>  20 A. I can't think of any right now.  21 <b>Q. How about ever in your tenure at</b>  22 <b>Greenberg Traurig?</b>  23 A. None come to mind as I'm sitting  24 here today.  25 <b>Q. But, again, the client intake</b></p>
<p style="text-align: right;">Page 227</p> <p>1 <b>P. Sutton</b>  2 A. To be sure that all of the  3 questions have been answered and that the  4 form is complete and that there is no  5 obvious reason to decline representation in  6 that particular matter for which the intake  7 memorandum is being generated.  8 So, for example, if there was no  9 conflict search run by having a signature  10 of a senior shareholder who can peruse the  11 memorandum and see if there's something  12 that has been omitted or there's something  13 that requires further attention.  14 <b>Q. Is the absence of a written</b>  15 <b>engagement letter, one of the items that</b>  16 <b>could require additional attention?</b>  17 A. It depends on the circumstances  18 as to whether or not it is customary in our  19 firm currently to have written engagement  20 letters with new clients coming in.  21 There have been instances in the  22 past in my practice where if you're  23 representing a client for 35 years and you  24 worked with a handshake for 35 years where  25 you may not have a new engagement letter,</p>	<p style="text-align: right;">Page 229</p> <p>1 <b>P. Sutton</b>  2 <b>sheet or the memorandum in Exhibit 9</b>  3 <b>references there is no representation</b>  4 <b>letter in place, and you said that you</b>  5 <b>don't have any knowledge of that one way or</b>  6 <b>the other, right?</b>  7 A. You made a statement.  8 <b>Q. I'm just saying if I understood</b>  9 <b>your testimony correctly.</b>  10 A. My testimony was that there is an  11 X in the box next to the word no on line  12 number 19. That's what my testimony was.  13 <b>Q. If there was a written</b>  14 <b>representation letter in place, would that</b>  15 <b>be contained in Greenberg's files?</b>  16 A. It is my practice to retain a  17 copy of retainers or engagement letters.  18 <b>Q. Do you know if Greenberg produced</b>  19 <b>all copies of engagement letters with</b>  20 <b>Quickie in connection with this litigation?</b>  21 A. I did not personally review each  22 of the documents or copies thereof turned  23 over to you, so I don't know in the  24 litigation that this deposition is  25 occurring in what documents specifically</p>



59 (Pages 230 to 233)

<p style="text-align: right;">Page 230</p> <p>1 P. Sutton</p> <p>2 have been turned over to you.</p> <p>3 <b>Q. Do you know if those documents</b></p> <p>4 <b>were even searched for?</b></p> <p>5 A. We have outside counsel, an</p> <p>6 office of the firm's counsel who handle</p> <p>7 matters of that kind in this litigation.</p> <p>8 That's not something I was personally</p> <p>9 charged with.</p> <p>10 <b>Q. Okay.</b></p> <p>11 <b>Well, I'll represent to you that</b></p> <p>12 <b>I did not find in Greenberg's production a</b></p> <p>13 <b>written engagement letter for matter number</b></p> <p>14 <b>518220100.</b></p> <p>15 <b>Do you have any information</b></p> <p>16 <b>suggesting that there would be an</b></p> <p>17 <b>engagement letter or should be an</b></p> <p>18 <b>engagement letter for that matter number?</b></p> <p>19 A. I think my prior answer is</p> <p>20 responsive to your inquiry. That's not</p> <p>21 something I was charged with responsibility</p> <p>22 for in the present litigation.</p> <p>23 MR. LODEN: I'll ask the reporter</p> <p>24 to mark Exhibit 10.</p> <p>25 (Exhibit 10, Client Matter Intake</p>	<p style="text-align: right;">Page 232</p> <p>1 P. Sutton</p> <p>2 containing Roman Numeral II.</p> <p>3 <b>Q. And then the matter name</b></p> <p>4 <b>listed -- who, before I ask that, who</b></p> <p>5 <b>prepares these sheets?</b></p> <p>6 A. They're normally prepared by an</p> <p>7 attorney associated with bringing the new</p> <p>8 matter in.</p> <p>9 <b>Q. For example, here up at the top</b></p> <p>10 <b>this one says authored by Todd S. Sharinn</b></p> <p>11 <b>and Paula J. S-P-E-C-H-T.</b></p> <p>12 <b>Do you see that?</b></p> <p>13 A. I'm sorry, where are you reading?</p> <p>14 <b>Q. On the top of page 1 of Exhibit</b></p> <p>15 <b>10.</b></p> <p>16 A. Can you just point to -- okay. I</p> <p>17 see that. I see authored by the typed in</p> <p>18 Todd S. Sharinn and Paula J. Specht.</p> <p>19 <b>Q. So does that mean that</b></p> <p>20 <b>Mr. Sharinn and Ms. Specht authored this</b></p> <p>21 <b>document?</b></p> <p>22 A. I do not know, but I have no</p> <p>23 reason to doubt that Todd Sharinn was</p> <p>24 associated with authoring this client</p> <p>25 matter intake memorandum.</p>
<p style="text-align: right;">Page 231</p> <p>1 P. Sutton</p> <p>2 Memorandum dated 9/9/01, marked for</p> <p>3 identification, as of this date.)</p> <p>4 BY MR. LODEN:</p> <p>5 <b>Q. Mr. Sutton, you've just been</b></p> <p>6 <b>handed Exhibit 10, which is another 3-page</b></p> <p>7 <b>document which appears to be a Greenberg</b></p> <p>8 <b>Taurig client matter intake memorandum</b></p> <p>9 <b>with the date September 9, 2001 on there.</b></p> <p>10 <b>Do you see that?</b></p> <p>11 A. I see the date September 9, 2001</p> <p>12 near the top on the right-hand side.</p> <p>13 <b>Q. Do you see that this is a</b></p> <p>14 <b>Greenberg Taurig client matter intake</b></p> <p>15 <b>memorandum?</b></p> <p>16 A. I see that this document is just</p> <p>17 that.</p> <p>18 <b>Q. And this document is for an</b></p> <p>19 <b>existing client, new matter only -- do you</b></p> <p>20 <b>see that that box is check?</b></p> <p>21 A. I see the X in the box next to</p> <p>22 those words.</p> <p>23 <b>Q. And then the matter number</b></p> <p>24 <b>assigned is 51822.0101, do you see that?</b></p> <p>25 A. I see those digits on the line</p>	<p style="text-align: right;">Page 233</p> <p>1 P. Sutton</p> <p>2 <b>Q. Looking back at item number 7</b></p> <p>3 <b>under Roman Numeral II, the matter</b></p> <p>4 <b>description is patent prosecution.</b></p> <p>5 <b>Do you see that?</b></p> <p>6 A. I do.</p> <p>7 <b>Q. What does that mean?</b></p> <p>8 A. We use the term sometimes patent</p> <p>9 prosecution to distinguish between the</p> <p>10 filing and prosecution of patent</p> <p>11 applications as opposed to interparty</p> <p>12 matters such as trial litigation.</p> <p>13 <b>Q. And then yourself, you are listed</b></p> <p>14 <b>as the billing attorney for this matter, do</b></p> <p>15 <b>you see that?</b></p> <p>16 A. I see my name on that line.</p> <p>17 <b>Q. Were you the billing attorney for</b></p> <p>18 <b>this matter?</b></p> <p>19 A. I have no reason to doubt that I</p> <p>20 was.</p> <p>21 <b>Q. Turning to page 2, line 19, this</b></p> <p>22 <b>is a representation agreement letter, the</b></p> <p>23 <b>box no is checked.</b></p> <p>24 <b>Do you see that?</b></p> <p>25 A. I see the X next to the word no.</p>

60 (Pages 234 to 237)

<p style="text-align: right;">Page 234</p> <p>1 P. Sutton</p> <p>2 <b>Q. Have you ever seen a</b></p> <p>3 <b>representation agreement letter for matter</b></p> <p>4 <b>number 0101?</b></p> <p>5 A. I don't recall seeing one or not</p> <p>6 seeing one. I just don't have any personal</p> <p>7 information at this point.</p> <p>8 <b>Q. Under line 24 billing attorney</b></p> <p>9 <b>signature, is that your signature?</b></p> <p>10 A. That appears to be my signature,</p> <p>11 yes.</p> <p>12 <b>Q. And then under 26, is that</b></p> <p>13 <b>Mr. Jacobs' signature again?</b></p> <p>14 A. I don't know whether it's his</p> <p>15 signature, but I do see that Albert Jacobs</p> <p>16 is spelled out.</p> <p>17 <b>Q. If you turn to --</b></p> <p>18 A. So I don't know whether he signed</p> <p>19 it or somebody else signed it on his behalf</p> <p>20 or what the story is on that on item number</p> <p>21 26.</p> <p>22 <b>Q. Where is Albert Jacobs spelled</b></p> <p>23 <b>out? You're just looking at the --</b></p> <p>24 A. I'm looking at A-L-B-E-R-T Jacobs</p> <p>25 under item number 26.</p>	<p style="text-align: right;">Page 236</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>that handwriting on there?</b></p> <p>3 A. If I don't recognize the</p> <p>4 handwriting, how would I possibly know who</p> <p>5 wrote it?</p> <p>6 <b>Q. Someone could have told you I</b></p> <p>7 <b>wrote it on there, but you wouldn't</b></p> <p>8 <b>recognize that person's handwriting.</b></p> <p>9 <b>So I'm asking do you know who</b></p> <p>10 <b>wrote that on there?</b></p> <p>11 A. I do not.</p> <p>12 MR. LODEN: I'd ask the reporter</p> <p>13 to mark Exhibit 11.</p> <p>14 (Exhibit 11, Client Matter Intake</p> <p>15 Memorandum dated 9/9/01, marked for</p> <p>16 identification, as of this date.)</p> <p>17 BY MR. LODEN:</p> <p>18 <b>Q. The reporter has just handed you</b></p> <p>19 <b>what's been marked as Exhibit 11, which</b></p> <p>20 <b>appears to be another Greenberg Traurig</b></p> <p>21 <b>client matter intake memorandum, a</b></p> <p>22 <b>three-page document.</b></p> <p>23 <b>What is the date on this</b></p> <p>24 <b>document?</b></p> <p>25 A. I see a date on the line of Roman</p>
<p style="text-align: right;">Page 235</p> <p>1 P. Sutton</p> <p>2 <b>Q. Okay.</b></p> <p>3 <b>Turning to page 3.</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Which appears to be another copy</b></p> <p>6 <b>of what we just talked about, at least half</b></p> <p>7 <b>of page 2, there is another line 19, do you</b></p> <p>8 <b>see that, there is a representation</b></p> <p>9 <b>agreement letter in place?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. Do you see that?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. And then out in the right-hand</b></p> <p>14 <b>side someone handwrote in existing client,</b></p> <p>15 <b>no engagement letter.</b></p> <p>16 <b>Do you see that?</b></p> <p>17 A. I see that.</p> <p>18 <b>Q. Do you recognize that</b></p> <p>19 <b>handwriting?</b></p> <p>20 A. I do not.</p> <p>21 <b>Q. You have no idea who placed that</b></p> <p>22 <b>handwriting on there?</b></p> <p>23 A. I do not recognize that</p> <p>24 handwriting.</p> <p>25 <b>Q. Do you have any idea who placed</b></p>	<p style="text-align: right;">Page 237</p> <p>1 P. Sutton</p> <p>2 Numeral I, September 9, 2001.</p> <p>3 <b>Q. And on the new client existing</b></p> <p>4 <b>client options, which box is checked?</b></p> <p>5 A. There is an X in a box next to</p> <p>6 existing client new matter only.</p> <p>7 <b>Q. And what was the new matter,</b></p> <p>8 <b>client matter number established for this</b></p> <p>9 <b>intake sheet?</b></p> <p>10 A. On the line carrying Roman</p> <p>11 Numeral II, there is a writing of the</p> <p>12 digits 51822.0102.</p> <p>13 <b>Q. And then right below that it</b></p> <p>14 <b>references a concentric passive knotless</b></p> <p>15 <b>suture terminator and then the matter</b></p> <p>16 <b>description is patent prosecution.</b></p> <p>17 <b>Is the question is, is this a new</b></p> <p>18 <b>matter for a prosecution of a separate</b></p> <p>19 <b>patent?</b></p> <p>20 A. The matter name, line 6 of</p> <p>21 Exhibit 11, is not identical with the</p> <p>22 matter name on line 6 of Exhibit 10.</p> <p>23 <b>Q. Right.</b></p> <p>24 <b>So what does that mean to you?</b></p> <p>25 A. It's possible that this is a</p>



1 (Pages 238 to 241)

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1 P. Sutton

2 patent or patent application that is  
3 distinct from the one on Exhibit 10.

4 **Q. And then you are listed as the**  
5 **billing attorney.**

6 **Do you see that?**

7 A. I see my name there, yes.

8 **Q. Turning again to page 2, there is**  
9 **a representation letter and agreement**  
10 **letter in place, no is checked.**

11 **Do you see that?**

12 A. I see the X next to the word no.

13 **Q. Is that your signature on line**  
14 **24?**

15 A. That looks like my signature,  
16 yes.

17 **Q. You referenced back to Exhibit 10**  
18 **and said that the matter name for in**  
19 **Exhibit 10 appears to be different than**  
20 **Exhibit 11.**

21 **What is the purpose of setting up**  
22 **separate matters for different patent**  
23 **prosecution work?**

24 A. So that work on the different  
25 matters can be billed separately and both

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1 P. Sutton

2 we and the client can regenerate separate  
3 invoices and the client can keep track of  
4 fees and approve each matter separately  
5 where that is appropriate or requested by  
6 the client.

7 There are instances where a  
8 separate matter is not created for more  
9 than one patent prosecution matter for the  
10 same client.

11 **Q. But at least with respect to 10**  
12 **and 11, it looks like two different matters**  
13 **were set up.**

14 A. There are two different matter  
15 numbers on the lines of the Roman Numeral  
16 II.

17 **Q. As we'll see there are more**  
18 **matter numbers.**

19 MR. LODEN: If you can mark  
20 Exhibit 12, please.

21 (Exhibit 12, Client Matter Intake  
22 Memorandum dated 11/1/01, marked for  
23 identification, as of this date.)

24 BY MR. LODEN:

25 **Q. I've just handed you what's been**

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1 P. Sutton

2 marked as Exhibit 12, which is another  
3 Greenberg Taurig client matter intake  
4 memorandum, existing client new matter only  
5 is checked.

6 **Do you see that?**

7 A. I see the X in the box next to  
8 those words.

9 **Q. November 1, 2001 is the date?**

10 A. I see that date on the line of  
11 Roman Numeral I.

12 **Q. And then the matter number in**  
13 **Roman Numeral II is 518220103?**

14 A. With a decimal point before the  
15 0103.

16 **Q. The matter name is atrial --**

17 **excuse me, Arterial Fixation Avoiding**  
18 **Sutures.**

19 **Do you see that?**

20 A. I see those words on line 6.

21 **Q. Do you recall anything about that**  
22 **matter name?**

23 A. Not as I sit here today.

24 **Q. Matter description is patent**  
25 **application.**

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1 P. Sutton

2 **Do you see that?**

3 A. I do.

4 **Q. How does patent application**  
5 **differ from patent prosecution?**

6 A. As those terms are used by patent  
7 attorneys, the patent application is an  
8 application for letters patent. Patent  
9 prosecution is the handling or the  
10 transactions or arguments back and forth  
11 between the attorney of record and the U.S.  
12 Patent and Trademark Office seeking to get  
13 the patent application allowed and a patent  
14 granted.

15 **Q. So patent application is the work**  
16 **done to prepare the application and then**  
17 **once the application is filed, patent**  
18 **prosecution refers to the work that's done**  
19 **between filing and either granting or**  
20 **denial of the application, is that fair?**

21 A. A patent application is an  
22 application for the patent. The work to be  
23 done may or may not include preparation of  
24 that patent application or revisions to an  
25 application that has already been prepared.

62 (Pages 242 to 245)

<p style="text-align: right;">Page 242</p> <p>1 P. Sutton</p> <p>2 So the words patent application do not</p> <p>3 necessarily mean preparation from scratch</p> <p>4 on a patent application.</p> <p>5 The words patent prosecution is a</p> <p>6 category that may or may not include</p> <p>7 preparation of a patent application or if</p> <p>8 one has already been prepared the</p> <p>9 prosecution of transactions with the Patent</p> <p>10 and Trademark Office in an effort to get</p> <p>11 that patent application allowed.</p> <p>12 <b>Q. Okay.</b></p> <p>13 <b>Immediately below that, do you</b></p> <p>14 <b>see the words existing client, no</b></p> <p>15 <b>engagement letter?</b></p> <p>16 A. I see that.</p> <p>17 <b>Q. Have you ever seen an engagement</b></p> <p>18 <b>letter for matter number 0103 from the</b></p> <p>19 <b>Quickie?</b></p> <p>20 A. I have no present recollection of</p> <p>21 any, of having seen an engagement letter</p> <p>22 relating to 51822.0103.</p> <p>23 (Recess taken from 3:58 p.m. to</p> <p>24 4:08 p.m.)</p> <p>25 (Exhibit 13, Greenberg Traurig</p>	<p style="text-align: right;">Page 244</p> <p>1 P. Sutton</p> <p>2 client intake memorandum, marked for</p> <p>3 identification, as of this date.)</p> <p>4 (Exhibit 20, Summary of</p> <p>5 documents, marked for identification,</p> <p>6 as of this date.)</p> <p>7 (Recess taken from 4:11 p.m. to</p> <p>8 4:20 p.m.)</p> <p>9 BY MR. LODEN:</p> <p>10 <b>Q. During the break I had the</b></p> <p>11 <b>reporter mark several more exhibits to</b></p> <p>12 <b>hopefully save us some time on the record.</b></p> <p>13 <b>I'm handing you what's been</b></p> <p>14 <b>marked as Exhibit 13, Mr. Sutton, which is</b></p> <p>15 <b>another Greenberg Traurig client matter</b></p> <p>16 <b>intake memorandum dated November 28, 2001.</b></p> <p>17 <b>The matter number is 51822.0104.</b></p> <p>18 <b>Do you see that?</b></p> <p>19 A. I see those numbers.</p> <p>20 <b>Q. The matter name is Quickie, LLC</b></p> <p>21 <b>versus Medtronics.</b></p> <p>22 <b>Is this the client matter setup</b></p> <p>23 <b>for the Medtronic litigation?</b></p> <p>24 A. I'm not aware of any other</p> <p>25 litigation by Quickie against Medtronic.</p>
<p style="text-align: right;">Page 243</p> <p>1 P. Sutton</p> <p>2 client matter intake memorandum dated</p> <p>3 11/28/01, marked for identification,</p> <p>4 as of this date.)</p> <p>5 (Exhibit 14, Document referencing</p> <p>6 client matter number 51822.010400,</p> <p>7 marked for identification, as of this</p> <p>8 date.)</p> <p>9 (Exhibit 15, Greenberg Traurig</p> <p>10 client matter intake memorandum dated</p> <p>11 1/29/02, marked for identification, as</p> <p>12 of this date.)</p> <p>13 (Exhibit 16, Greenberg Traurig</p> <p>14 client matter intake memorandum,</p> <p>15 client matter number 51822.0106,</p> <p>16 marked for identification, as of this</p> <p>17 date.)</p> <p>18 (Exhibit 17, Greenberg Traurig</p> <p>19 client matter intake memorandum dated</p> <p>20 8/5/02, marked for identification, as</p> <p>21 of this date.)</p> <p>22 (Exhibit 18, Document dated</p> <p>23 11/1/02, marked for identification, as</p> <p>24 of this date.)</p> <p>25 (Exhibit 19, Greenberg Traurig</p>	<p style="text-align: right;">Page 245</p> <p>1 P. Sutton</p> <p>2 So I believe it is.</p> <p>3 <b>Q. In fact, in the matter</b></p> <p>4 <b>description, it says possible patent</b></p> <p>5 <b>infringement litigation and then it</b></p> <p>6 <b>references the '160 Patent number there.</b></p> <p>7 <b>Do you see that?</b></p> <p>8 A. I see those words.</p> <p>9 <b>Q. Under billing attorney, again</b></p> <p>10 <b>you're listed. Todd Sharinn is listed as</b></p> <p>11 <b>the working attorney. Under originating</b></p> <p>12 <b>attorney, there is TOS.</b></p> <p>13 <b>Do you see that?</b></p> <p>14 A. Where is that?</p> <p>15 <b>Q. Roman Numeral III, number 9.</b></p> <p>16 A. Okay.</p> <p>17 <b>Q. What is TOS?</b></p> <p>18 A. Is Todd's middle initial O,</p> <p>19 because that would be Todd O. Sharinn?</p> <p>20 <b>Q. I think his middle initial is S,</b></p> <p>21 <b>if you look above, it's Todd S. Sharinn.</b></p> <p>22 A. That may be a typo.</p> <p>23 <b>Q. Okay.</b></p> <p>24 A. But I don't think it would be</p> <p>25 Todd or Sutton.</p>

63 (Pages 246 to 249)

<p style="text-align: right;">Page 246</p> <p>1 P. Sutton</p> <p>2 <b>Q. Okay, sorry. That one hadn't</b></p> <p>3 <b>occurred to me.</b></p> <p>4 <b>Okay.</b></p> <p>5 <b>To the second page of Exhibit</b></p> <p>6 <b>13, line 19, do you see that the no box has</b></p> <p>7 <b>an X in it there on representation</b></p> <p>8 <b>agreement letter --</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. But, in fact, there was an</b></p> <p>11 <b>engagement letter for the Medtronic</b></p> <p>12 <b>litigation.</b></p> <p>13 <b>Do you recall that?</b></p> <p>14 A. If you can show me a document,</p> <p>15 that will help refresh my recollection.</p> <p>16 <b>Q. I'm handing you Exhibit 14.</b></p> <p>17 A. Actually, if you look at the date</p> <p>18 November 28, 2001 on Exhibit 13, at that</p> <p>19 time I don't think there was a</p> <p>20 representation, because the representation</p> <p>21 agreement is dated February 5, 2002.</p> <p>22 <b>Q. Okay.</b></p> <p>23 A. So while there was none then,</p> <p>24 there was a follow-up Exhibit 14.</p> <p>25 <b>Q. And in fact, in Exhibit 14 it</b></p>	<p style="text-align: right;">Page 248</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>referring to earlier?</b></p> <p>3 A. That's correct.</p> <p>4 <b>Q. And if you look at paragraph 9,</b></p> <p>5 <b>it's on page 2 of the engagement letter, do</b></p> <p>6 <b>you see where it says, "Quickie</b></p> <p>7 <b>acknowledges that GT represents it in other</b></p> <p>8 <b>matters"?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. So --</b></p> <p>11 A. "But that" -- and it continues.</p> <p>12 <b>Q. Right.</b></p> <p>13 <b>"But that GT has not represented</b></p> <p>14 <b>Quickie in connection with the negotiation</b></p> <p>15 <b>or execution of this agreement."</b></p> <p>16 A. Correct.</p> <p>17 <b>Q. So then is it fair to say that --</b></p> <p>18 A. Because it had general counsel in</p> <p>19 the form of Alan Fell.</p> <p>20 <b>Q. Right.</b></p> <p>21 <b>So this engagement letter in</b></p> <p>22 <b>Exhibit 14 relates only to matter number</b></p> <p>23 <b>0104, the Medtronic litigation, not to the</b></p> <p>24 <b>other matters?</b></p> <p>25 A. It's been a while since I saw</p>
<p style="text-align: right;">Page 247</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>references client matter number</b></p> <p>3 <b>51822.010400 there on the regarding line.</b></p> <p>4 <b>Do you see that on the first</b></p> <p>5 <b>page?</b></p> <p>6 A. Yes, yes.</p> <p>7 <b>Q. And if you turn to the last page,</b></p> <p>8 <b>it looks like, is your signature there by</b></p> <p>9 <b>Paul J. Sutton?</b></p> <p>10 A. Yes, that appears to be my</p> <p>11 signature.</p> <p>12 <b>Q. And then going back to the first</b></p> <p>13 <b>page, your name appears on the letterhead,</b></p> <p>14 <b>correct?</b></p> <p>15 A. Correct.</p> <p>16 <b>Q. And you state, "Paul and I are</b></p> <p>17 <b>pleased that Quickie, LLC has retained</b></p> <p>18 <b>Greenberg Traurig in connection with</b></p> <p>19 <b>Quickie's claims of infringement of the</b></p> <p>20 <b>United States Patent No. 6,066,160 by</b></p> <p>21 <b>Medtronic."</b></p> <p>22 <b>Do you see that?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. So this was the engagement letter</b></p> <p>25 <b>for the Medtronic litigation that we were</b></p>	<p style="text-align: right;">Page 249</p> <p>1 P. Sutton</p> <p>2 this. So I do, I can say that this is,</p> <p>3 this relates to the claims of infringement</p> <p>4 of the '160 Patent against Medtronic.</p> <p>5 <b>Q. Okay.</b></p> <p>6 <b>And that's matter number 0 --</b></p> <p>7 A. And also possibly Guidant</p> <p>8 Corporation, if you'll see at the end of</p> <p>9 the first paragraph because that was a</p> <p>10 potential target as well, infringer.</p> <p>11 As we're talking about this, a</p> <p>12 couple of things come to mind.</p> <p>13 While we went back and forth</p> <p>14 regarding letters to and from clients or to</p> <p>15 and from new attorneys of record --</p> <p>16 <b>Q. Let me just -- there wasn't a</b></p> <p>17 <b>question pending, so what are you doing</b></p> <p>18 <b>here?</b></p> <p>19 A. Well, this refreshes my</p> <p>20 recollection on something that has to do</p> <p>21 with my testimony here today and that</p> <p>22 concerns the -- you asked me previously</p> <p>23 about letters accompanying papers or files</p> <p>24 or whatever going to or from new attorneys</p> <p>25 or coming from other attorneys to my firm,</p>

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<p style="text-align: right;">Page 250</p> <p>1 P. Sutton</p> <p>2 and I just wanted to be clear that, because</p> <p>3 I hesitated about what is good practice or</p> <p>4 whatever, that I didn't want that to be</p> <p>5 misconstrued as anything other than our</p> <p>6 view, my view, my personal view that when</p> <p>7 Quickie revoked our Power of Attorney that</p> <p>8 we had no responsibility whatsoever for the</p> <p>9 '160 Patent thereafter.</p> <p>10 If that was not clear, it's</p> <p>11 important that I make that clear on the</p> <p>12 record. This representation letter,</p> <p>13 Exhibit 14, just brings this to mind that</p> <p>14 here Exhibit 14 is we're taking on</p> <p>15 responsibility of a matter, but earlier you</p> <p>16 talked about transferring of the matter to</p> <p>17 Thelen. Once Thelen assumed responsibility</p> <p>18 by virtue of our revocation of our Power of</p> <p>19 Attorney, we had no responsibility</p> <p>20 thereafter.</p> <p>21 <b>Q. Are you done with that statement?</b></p> <p>22 A. Yes, yes.</p> <p>23 MR. LODEN: Objection.</p> <p>24 A. What I'm doing is clarifying</p> <p>25 prior testimony that I gave you.</p>	<p style="text-align: right;">Page 252</p> <p>1 P. Sutton</p> <p>2 <b>Q. Under matter name, what is the</b></p> <p>3 <b>matter name listed there?</b></p> <p>4 A. I believe that that's a</p> <p>5 misspelling of Guidant, G-U-I-D-A-N-T,</p> <p>6 Corporation. I believe that that's a typo.</p> <p>7 <b>Q. Let me show you then Exhibit 16.</b></p> <p>8 <b>I've just handed you Exhibit 16,</b></p> <p>9 <b>which is another Greenberg Traurig client</b></p> <p>10 <b>matter intake memorandum with matter</b></p> <p>11 <b>number, client matter number 51822.0106,</b></p> <p>12 <b>and the matter name is Guidant Corporation.</b></p> <p>13 A. All right. So I don't have a</p> <p>14 present recollection of the entity that</p> <p>15 appears on line 6 of Exhibit 15.</p> <p>16 <b>Q. Okay.</b></p> <p>17 A. They're both possible patent</p> <p>18 infringement litigation, 15 and 16.</p> <p>19 <b>Q. And then 16, again, is for client</b></p> <p>20 <b>matter number 518220106, right?</b></p> <p>21 A. I see those numbers on Roman</p> <p>22 Numeral line II.</p> <p>23 <b>Q. And the matter name given is</b></p> <p>24 <b>Guidant Corporation and the description is</b></p> <p>25 <b>possible patent infringement litigation?</b></p>
<p style="text-align: right;">Page 251</p> <p>1 P. Sutton</p> <p>2 <b>Q. Well, as you've said multiple</b></p> <p>3 <b>times here, the testimony is what it is.</b></p> <p>4 <b>There wasn't a question pending, so I'll</b></p> <p>5 <b>object to nonresponsiveness of your</b></p> <p>6 <b>statement.</b></p> <p>7 A. No, I'm further responding to the</p> <p>8 question that you asked me previously. So</p> <p>9 there is a question and a response that</p> <p>10 I've just supplemented.</p> <p>11 <b>Q. Okay.</b></p> <p>12 <b>The objection stands.</b></p> <p>13 MR. SCOTT: Move to strike as</p> <p>14 nonresponsive.</p> <p>15 MR. LODEN: Move to strike as</p> <p>16 nonresponsive.</p> <p>17 BY MR. LODEN:</p> <p>18 <b>Q. Going to Exhibit 15, again</b></p> <p>19 <b>Greenberg Traurig client intake or client</b></p> <p>20 <b>matter intake memorandum dated January 29,</b></p> <p>21 <b>2002 with the client matter number</b></p> <p>22 <b>51822.0105.</b></p> <p>23 <b>Do you see that?</b></p> <p>24 A. I see those numbers on the line</p> <p>25 of Roman Numeral II.</p>	<p style="text-align: right;">Page 253</p> <p>1 <b>P. Sutton</b></p> <p>2 A. Yes, somehow I see what appears</p> <p>3 to be my signature on line, on item number</p> <p>4 24.</p> <p>5 <b>Q. Right.</b></p> <p>6 A. And that of what appears to be Al</p> <p>7 Jacobs with regard to Mr. Jacobs that his</p> <p>8 name appears on matters in our files for</p> <p>9 administrative purposes in a number of</p> <p>10 instances, that would include with respect</p> <p>11 to Exhibit 8.</p> <p>12 <b>Q. So his name just appears there</b></p> <p>13 <b>for administrative purposes, he has no</b></p> <p>14 <b>responsibility other than --</b></p> <p>15 A. I don't believe the appearance of</p> <p>16 his name on Exhibit 8 has anything to do</p> <p>17 with responsibility for actions to be</p> <p>18 taken, but more for administration</p> <p>19 purposes.</p> <p>20 <b>Q. What about Exhibit 16?</b></p> <p>21 A. Exhibit 16, he signed Exhibit 16</p> <p>22 under the 26, which is intake member</p> <p>23 committee member signature. So he signed</p> <p>24 in that capacity on that. He served more</p> <p>25 than one capacity.</p>

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<p style="text-align: right;">Page 254</p> <p>1 P. Sutton</p> <p>2 <b>Q. Okay.</b></p> <p>3 <b>I'm going to hand you Exhibit 17.</b></p> <p>4 <b>Do you have Exhibit 17 in front</b></p> <p>5 <b>of you?</b></p> <p>6 A. I do.</p> <p>7 <b>Q. What is Exhibit 17?</b></p> <p>8 A. It's a Greenberg Traurig client</p> <p>9 matter intake memorandum, and it carries a</p> <p>10 date in the upper right of August 5, 2002.</p> <p>11 <b>Q. Is this an intake memorandum for</b></p> <p>12 <b>a new client or an existing client?</b></p> <p>13 A. The box next to existing client</p> <p>14 new matter only is marked with an X, and</p> <p>15 with regard to Exhibits 10, 11, 12, 13,</p> <p>16 14 -- I'm sorry, 10, 11, 12, 13, 15, 16 and</p> <p>17 17, these client matter intake memoranda</p> <p>18 are completed so that physical files can be</p> <p>19 set up and the appropriate papers</p> <p>20 corresponding to each matter can go into</p> <p>21 the appropriate files.</p> <p>22 <b>Q. And you also said earlier that</b></p> <p>23 <b>the client matters are set up for billing</b></p> <p>24 <b>purposes?</b></p> <p>25 A. That's correct. So it serves the</p>	<p style="text-align: right;">Page 256</p> <p>1 P. Sutton</p> <p>2 we have records or documents relating to</p> <p>3 that '160 Patent, we would want them to be</p> <p>4 in a file that has its own identifying</p> <p>5 client matter so that it doesn't get mixed</p> <p>6 in with other things, but the opening of</p> <p>7 this client matter, that matter number</p> <p>8 0.010700 does not suggest that there is</p> <p>9 work to be done or that time is to be</p> <p>10 billed. It's part of the organization of</p> <p>11 our files in our IP department.</p> <p>12 <b>Q. As you sit here today, do you</b></p> <p>13 <b>know whether work was done in matter number</b></p> <p>14 <b>0107?</b></p> <p>15 A. I'd have to see the timesheets or</p> <p>16 bills to know that.</p> <p>17 <b>Q. Do you know who requested matter</b></p> <p>18 <b>number 0107 to be created?</b></p> <p>19 A. The client requested us to handle</p> <p>20 that patent to accept files relating to</p> <p>21 that patent, and I believe that Todd</p> <p>22 Sharinn would have been the person, the</p> <p>23 attorney within our firm who initiated the</p> <p>24 opening of the client matter intake</p> <p>25 memorandum.</p>
<p style="text-align: right;">Page 255</p> <p>1 P. Sutton</p> <p>2 purpose of having a separate client matter</p> <p>3 number, so there's a separate physical</p> <p>4 folder for papers having to do with that</p> <p>5 matter that can go in there, and if there's</p> <p>6 time entries, if there are time entries</p> <p>7 that carry that client matter number, those</p> <p>8 time entries work their way through the</p> <p>9 accounting system to possible billing.</p> <p>10 <b>Q. And going back to Exhibit 17,</b></p> <p>11 <b>what is the matter or client matter number</b></p> <p>12 <b>assigned for this piece of business?</b></p> <p>13 A. That carries the numbers</p> <p>14 51822.0107.</p> <p>15 <b>Q. And the matter name?</b></p> <p>16 A. Next to that on line 6 it says,</p> <p>17 "Passive knotless suture system patent" and</p> <p>18 then it references the '160 Patent.</p> <p>19 <b>Q. And do you see where it says</b></p> <p>20 <b>matter description, patent for medical</b></p> <p>21 <b>instrument?</b></p> <p>22 A. I see that.</p> <p>23 <b>Q. What, what work was being</b></p> <p>24 <b>conducted in this client matter number?</b></p> <p>25 A. Possibly no work at all, but if</p>	<p style="text-align: right;">Page 257</p> <p>1 P. Sutton</p> <p>2 <b>Q. But the date on Exhibit 17 is</b></p> <p>3 <b>August 5, 2002.</b></p> <p>4 A. Correct.</p> <p>5 <b>Q. And I believe earlier you</b></p> <p>6 <b>testified that the client told Mr. Sharinn</b></p> <p>7 <b>in April 2002 that Thelen was taking over</b></p> <p>8 <b>responsibility for the '160 Patent?</b></p> <p>9 A. While that's so, nonetheless</p> <p>10 there are papers that need to be kept in an</p> <p>11 organized way and you need a separate</p> <p>12 number for the appropriate file within</p> <p>13 which, for example, the 160-related matters</p> <p>14 are located and must be filed.</p> <p>15 So we, it's our practice to have</p> <p>16 a physical file or folder with a distinct</p> <p>17 matter number for each matter that we're</p> <p>18 handling so that even though we don't have</p> <p>19 to do any work, there are papers</p> <p>20 nonetheless that need to be orderly kept.</p> <p>21 So the setting up of a separate</p> <p>22 matter facilitates the orderly keeping of</p> <p>23 documents.</p> <p>24 <b>Q. I believe previously you said</b></p> <p>25 <b>that those documents need to be kept, need</b></p>

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<p style="text-align: right;">Page 258</p> <p>1 <b>P. Sutton</b>  2 <b>to be kept in an organized way.</b>  3 <b>Why do they need to be kept that</b>  4 <b>way?</b>  5 A. It's our practice. Under our  6 practice, we keep documents in an orderly  7 way. You can keep them in a disorderly  8 way, but it's our practice to keep them  9 separated, and separated by matter numbers.  10 That does not suggest that work needs to be  11 done or the time needs to be entered or the  12 time needs to be billed.  13 <b>Q. Do you know if the papers that</b>  14 <b>were kept in an organized way with respect</b>  15 <b>to this client matter number 0107, do you</b>  16 <b>know whether those have been produced in</b>  17 <b>this litigation?</b>  18 A. I was not charged with  19 responsibility for transmitting copies of  20 documents to you. So I have no personal  21 information on that.  22 <b>Q. If you look back at Exhibit 3 to</b>  23 <b>your deposition, that's the PATS, patent</b>  24 <b>record sheet.</b>  25 A. Yes.</p>	<p style="text-align: right;">Page 260</p> <p>1 P. Sutton  2 way or another.  3 <b>Q. If you look at Exhibit 8, which</b>  4 <b>is the DIAMS record sheet. Again, the</b>  5 <b>docket number up there reflects</b>  6 <b>051822010700/U.S.</b>  7 A. I see those numbers.  8 <b>Q. Do you have any reason to believe</b>  9 <b>that that client matter number refers to</b>  10 <b>anything other than the client matter that</b>  11 <b>was established through the intake</b>  12 <b>memorandum in Exhibit 17?</b>  13 A. I have no information one way or  14 another. If you go to Exhibit 3 --  15 <b>Q. I was done with Exhibit 3.</b>  16 A. I know, but I just want to  17 supplement my response with respect to your  18 query about Exhibit 3 and Exhibit --  19 <b>Q. ??</b>  20 A. I gave you an incomplete answer.  21 Hold on. 8, Exhibit 8.  22 Exhibit 3 is a patent record  23 report generated by the PATS software.  24 Exhibit 8 is the patent record  25 report generated by DIAMS.</p>
<p style="text-align: right;">Page 259</p> <p>1 P. Sutton  2 <b>Q. It reflects this client matter</b>  3 <b>number 51822.0107, does it not?</b>  4 A. That's part of the client matter  5 number in the PATS system. The matter  6 number is 010700 U.S.  7 <b>Q. Right.</b>  8 A. At the top left of Exhibit 3.  9 <b>Q. Right.</b>  10 <b>And then if you turn to Exhibit</b>  11 <b>7 --</b>  12 A. Yes.  13 <b>Q. -- the file number there</b>  14 <b>referenced is the same client matter</b>  15 <b>number?</b>  16 A. I see next to file number  17 51822.010700.  18 <b>Q. Do you have any reason to believe</b>  19 <b>that the file number referenced on the</b>  20 <b>first page of Exhibit 7 is not the same</b>  21 <b>file number that was established by the</b>  22 <b>client matter intake memorandum in Exhibit</b>  23 <b>17?</b>  24 A. I don't know one way or another,  25 but I just don't have any information one</p>	<p style="text-align: right;">Page 261</p> <p>1 P. Sutton  2 All information with respect to  3 this '160 Patent and any Quickie matters  4 that were in PATS was transferred  5 completely to the DIAMS system when there  6 was the conversion from one to the other,  7 so that the databases with respect to each  8 PATS and the DIAMS system would be  9 identical from the standpoint of the  10 information in there.  11 MR. SCOTT: Strike,  12 nonresponsive.  13 MR. LODEN: Move to strike.  14 Objection. Nonresponsive.  15 A. It's not responsive to what?  16 <b>Q. A pending question. We've talked</b>  17 <b>about that for hours this morning.</b>  18 A. Excuse me, I have a question for  19 you. If I have given you an incomplete  20 answer, are you instructing me not to  21 complete the answer?  22 <b>Q. No, I'm not giving that</b>  23 <b>instruction at all.</b>  24 A. I've just completed that answer  25 that I had previously given in my testimony</p>



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<p style="text-align: right;">Page 262</p> <p>1 P. Sutton</p> <p>2 today pursuant to what you just said.</p> <p>3 MR. SCOTT: Same objection.</p> <p>4 <b>Q. I show you Exhibit 18, dated</b></p> <p>5 <b>November 1, 2002.</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. For matter number 0108, do you</b></p> <p>8 <b>see that?</b></p> <p>9 A. I do.</p> <p>10 <b>Q. And the matter name is new</b></p> <p>11 <b>surgical drape patent license?</b></p> <p>12 A. I see those words next to, on</p> <p>13 line number 6.</p> <p>14 <b>Q. Was Todd Sharinn of counsel at</b></p> <p>15 <b>Greenberg Traurig on November 1, 2002?</b></p> <p>16 A. I don't recall.</p> <p>17 <b>Q. Was he ever of counsel at</b></p> <p>18 <b>Greenberg Traurig?</b></p> <p>19 A. I believe he was, yes.</p> <p>20 <b>Q. So is that why -- well, strike</b></p> <p>21 <b>that.</b></p> <p>22 <b>Is that why no other name other</b></p> <p>23 <b>than Todd Sharinn appears on the billing</b></p> <p>24 <b>information in Roman Numeral III?</b></p> <p>25 A. I have no personal information</p>	<p style="text-align: right;">Page 264</p> <p>1 P. Sutton</p> <p>2 <b>Q. Exhibit 19. Again, Exhibit 19 is</b></p> <p>3 <b>a Greenberg Traurig client intake</b></p> <p>4 <b>memorandum.</b></p> <p>5 <b>Do you see that?</b></p> <p>6 A. I see the date December 3, 2002</p> <p>7 on Roman Numeral line number I.</p> <p>8 <b>Q. And what client matter number do</b></p> <p>9 <b>you see on Roman Numeral line II?</b></p> <p>10 A. I see the numbers 51822.0109.</p> <p>11 <b>Q. And what matter name do you see</b></p> <p>12 <b>on line VI?</b></p> <p>13 A. I see the words re-examination of</p> <p>14 U.S. Patent No. 6,066,160 by Medtronic.</p> <p>15 <b>Q. And what does that matter number</b></p> <p>16 <b>mean to you?</b></p> <p>17 A. It suggests that to the extent</p> <p>18 that we had any papers or received any</p> <p>19 documents or copies of anything relating to</p> <p>20 the re-examination that's referred to, that</p> <p>21 the matter number 010900 would be on</p> <p>22 physical file so that those copies could be</p> <p>23 collected in the proper place, namely that</p> <p>24 physical file.</p> <p>25 <b>Q. Okay.</b></p>
<p style="text-align: right;">Page 263</p> <p>1 P. Sutton</p> <p>2 one way or another.</p> <p>3 <b>Q. If you look on page 2, it appears</b></p> <p>4 <b>that the same person signed Roman Numeral</b></p> <p>5 <b>VI, conflicts, Roman Numeral VII</b></p> <p>6 <b>authorization, and Roman Numeral -- or</b></p> <p>7 <b>excuse me, number 26, intake committee</b></p> <p>8 <b>signature.</b></p> <p>9 <b>Do you see that those signatures</b></p> <p>10 <b>look very similar?</b></p> <p>11 A. Actually, I don't agree with what</p> <p>12 you just said.</p> <p>13 <b>Q. What part don't you agree with?</b></p> <p>14 A. I see similarities between</p> <p>15 signatures on lines 21, 24 and 26.</p> <p>16 However, on line 26, I see additional</p> <p>17 indicia with the name Albert it looks like</p> <p>18 Jacobs spelled out.</p> <p>19 <b>Q. Okay.</b></p> <p>20 A. If I'm reading that correctly. I</p> <p>21 don't recognize the signature.</p> <p>22 <b>Q. It looks like with respect to 26,</b></p> <p>23 <b>there are two signatures there on that</b></p> <p>24 <b>line, is that what you're saying?</b></p> <p>25 A. It could be two signatures.</p>	<p style="text-align: right;">Page 265</p> <p>1 P. Sutton</p> <p>2 <b>I'm going to hand you what I've</b></p> <p>3 <b>marked as Exhibit 20.</b></p> <p>4 <b>I'll tell you, Mr. Sutton, that</b></p> <p>5 <b>Exhibit 20 is a document that we had</b></p> <p>6 <b>prepared to list all the matter numbers for</b></p> <p>7 <b>client number 51822 that we've just gone</b></p> <p>8 <b>through in the preceding exhibits.</b></p> <p>9 A. Do I understand what you're</p> <p>10 saying is that your firm prepared what you</p> <p>11 marked as Exhibit 20?</p> <p>12 <b>Q. Yes.</b></p> <p>13 A. So that's not a document that</p> <p>14 came from Greenberg Traurig or any of the</p> <p>15 parties?</p> <p>16 <b>Q. It is not. It's a summary of a</b></p> <p>17 <b>document -- it's a summary of the documents</b></p> <p>18 <b>that Greenberg Traurig produced in this</b></p> <p>19 <b>case. Take all the time you need to look</b></p> <p>20 <b>at the exhibits in front of you. We can</b></p> <p>21 <b>take a break and you can look at all the</b></p> <p>22 <b>exhibits.</b></p> <p>23 A. No, no, I'm not going to</p> <p>24 authenticate or make comparisons --</p> <p>25 <b>Q. I'm not asking you --</b></p>

68 (Pages 266 to 269)

<p style="text-align: right;">Page 266</p> <p>1 <b>P. Sutton</b></p> <p>2 A. Please let me finish.</p> <p>3 <b>Q. There is not a question.</b></p> <p>4 A. Please let me finish.</p> <p>5 You've handed me something that</p> <p>6 was generated by your firm that is not a</p> <p>7 document kept in the ordinary course of</p> <p>8 business or a document that I've seen</p> <p>9 before and you're making a representation</p> <p>10 as to what you believe it is.</p> <p>11 Did you physically type this</p> <p>12 yourself?</p> <p>13 <b>Q. I'm not the one being deposed</b></p> <p>14 <b>here.</b></p> <p>15 A. I know, I'm just asking.</p> <p>16 <b>Q. I'm just waiting for you to</b></p> <p>17 <b>finish so I can object and ask a question.</b></p> <p>18 A. Why don't you go ahead with your</p> <p>19 question?</p> <p>20 MR. LODEN: Objection.</p> <p>21 Nonresponsive.</p> <p>22 BY MR. LODEN:</p> <p>23 <b>Q. My question is with the exhibits</b></p> <p>24 <b>that we've just gone through, does the</b></p> <p>25 <b>listing in Exhibit 20 reference the matter</b></p>	<p style="text-align: right;">Page 268</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>Mr. Sutton.</b></p> <p>3 A. Well, I'll take that as a</p> <p>4 response, suggesting that you did not</p> <p>5 create this yourself physically, and so I'm</p> <p>6 not in a position to answer any questions</p> <p>7 regarding Exhibit 20 because I don't know</p> <p>8 the answer to your question.</p> <p>9 <b>Q. I don't believe a question was</b></p> <p>10 <b>asked.</b></p> <p>11 A. Yes, you suggested that I be</p> <p>12 reviewing this to confirm that it contains</p> <p>13 information regarding other documents that</p> <p>14 I've given testimony to, but I'm sorry, I'm</p> <p>15 not able to --</p> <p>16 MR. SCOTT: The simple question</p> <p>17 is do you believe that this accurately</p> <p>18 reflects or summarizes the various</p> <p>19 intake memorandums that you --</p> <p>20 MR. CHU: I think that's a</p> <p>21 question for you guys to answer, not</p> <p>22 for him to answer.</p> <p>23 A. I do not know whether the</p> <p>24 information on Exhibit 20 is accurate. I</p> <p>25 have reason to believe that it is not</p>
<p style="text-align: right;">Page 267</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>numbers for the exhibits that we just went</b></p> <p>3 <b>through, does it contain the description of</b></p> <p>4 <b>the matter number and the date that was</b></p> <p>5 <b>reflected on each of the exhibits that we</b></p> <p>6 <b>just gone through the client intake matter</b></p> <p>7 <b>memorandum?</b></p> <p>8 MR. CHU: I'm going to object to</p> <p>9 that. I think that's improper.</p> <p>10 That's your summary, which is fine.</p> <p>11 But to ask this witness about it is</p> <p>12 unfair. It's not his job.</p> <p>13 A. I have no idea whether what you</p> <p>14 have -- and you refused to say whether you</p> <p>15 personally typed this -- did you personally</p> <p>16 type this?</p> <p>17 <b>Q. I'm not the one on deposition</b></p> <p>18 <b>today.</b></p> <p>19 A. I know, but I'm asking you, did</p> <p>20 you personally type this so that you can</p> <p>21 make the representation that you typed it</p> <p>22 and that you believe it's accurate?</p> <p>23 <b>Q. I believe it's accurate.</b></p> <p>24 A. Did you type it yourself?</p> <p>25 <b>Q. I'm not on deposition,</b></p>	<p style="text-align: right;">Page 269</p> <p>1 P. Sutton</p> <p>2 complete or accurate.</p> <p>3 <b>Q. What's the reason to believe that</b></p> <p>4 <b>it's not complete or accurate?</b></p> <p>5 A. The matter numbers do not appear</p> <p>6 to be complete.</p> <p>7 <b>Q. In what respect?</b></p> <p>8 A. The numbers under the column</p> <p>9 matter numbers do not appear to be accurate</p> <p>10 and complete.</p> <p>11 <b>Q. In what respect?</b></p> <p>12 A. There seem to be characters</p> <p>13 missing or digits missing.</p> <p>14 <b>Q. Is that what you're referring to,</b></p> <p>15 <b>two additional zeros?</b></p> <p>16 A. Again, I'm not going to answer</p> <p>17 any further questions with regard to</p> <p>18 Exhibit 20 because you can say what you'd</p> <p>19 like as to what it is. You refuse to tell</p> <p>20 me whether you typed it yourself.</p> <p>21 Since you refused to tell me if</p> <p>22 you typed it yourself, I'm not going to</p> <p>23 answer any further questions with respect</p> <p>24 to Exhibit 20. I think it's improper</p> <p>25 questions.</p>



69 (Pages 270 to 273)

<p style="text-align: right;">Page 270</p> <p>1 P. Sutton</p> <p>2 <b>Q. Just so I understand your</b></p> <p>3 <b>position, you refuse to answer any</b></p> <p>4 <b>questions about Exhibit 20?</b></p> <p>5 A. You can ask me questions, but I</p> <p>6 must say that you're using up time</p> <p>7 unnecessarily. Ask me whatever you want to</p> <p>8 ask me question by question and I'll deal</p> <p>9 with it. But I'm just telling you not to</p> <p>10 waste your time with a document that, you</p> <p>11 know -- this is like an exhibit for trial</p> <p>12 perhaps, but this is not proper.</p> <p>13 Can you identify any category on</p> <p>14 the 30(b)(6) Notice that Exhibit 20</p> <p>15 corresponds or relates to?</p> <p>16 <b>Q. Once again --</b></p> <p>17 MR. CHU: Can we go off the</p> <p>18 record?</p> <p>19 MR. LODEN: Sure, we can go off</p> <p>20 the record. Stop the clock right</p> <p>21 here.</p> <p>22 (Recess taken from 4:53 p.m. to</p> <p>23 4:56 p.m.)</p> <p>24 BY MR. LODEN:</p> <p>25 <b>Q. Mr. Sutton, based upon your</b></p>	<p style="text-align: right;">Page 272</p> <p>1 P. Sutton</p> <p>2 MR. LODEN: I ask you to mark</p> <p>3 Exhibit 21.</p> <p>4 (Exhibit 21, Pepe &amp; Hazard letter</p> <p>5 dated 5/30/00, marked for</p> <p>6 identification, as of this date.)</p> <p>7 BY MR. LODEN:</p> <p>8 <b>Q. Do you have 21 in front of you?</b></p> <p>9 A. I have it in front of me.</p> <p>10 <b>Q. Have you ever seen Exhibit 21</b></p> <p>11 <b>before?</b></p> <p>12 A. I may have. I believe I have.</p> <p>13 You're talking about the letter from Pepe &amp;</p> <p>14 Hazard?</p> <p>15 <b>Q. I'm talking about Exhibit 21.</b></p> <p>16 A. The Pepe &amp; Hazard letter dated</p> <p>17 May 30, 2000?</p> <p>18 <b>Q. Signed by Todd Sharinn, yes, that</b></p> <p>19 <b>letter.</b></p> <p>20 A. I have Exhibit 21 in front of me.</p> <p>21 <b>Q. Thank you.</b></p> <p>22 <b>If you look at the last sentence</b></p> <p>23 <b>of the first paragraph on page 2 of that</b></p> <p>24 <b>letter --</b></p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 271</p> <p>1 P. Sutton</p> <p>2 <b>refusal to answer any questions about --</b></p> <p>3 A. I said if you want to waste your</p> <p>4 time and ask me specific questions</p> <p>5 regarding Exhibit 20, I prepared you for</p> <p>6 the fact that this is something that you</p> <p>7 and/or your firm had prepared that I have</p> <p>8 not seen before and that I didn't want you</p> <p>9 to waste your time.</p> <p>10 But go ahead and ask me what</p> <p>11 you'd like and I'll give you an answer as</p> <p>12 to each with respect to Exhibit 20.</p> <p>13 <b>Q. Mr. Sutton, were you aware that</b></p> <p>14 <b>Todd Sharinn had promised Quickie to</b></p> <p>15 <b>provide notice before maintenance fees were</b></p> <p>16 <b>due on the '160 Patent?</b></p> <p>17 A. What time frame are you talking</p> <p>18 about, please?</p> <p>19 <b>Q. When you hired Todd Sharinn, when</b></p> <p>20 <b>Greenberg Traurig hired Todd Sharinn.</b></p> <p>21 A. I don't believe the premise of</p> <p>22 your question is accurate.</p> <p>23 <b>Q. What premise is inaccurate?</b></p> <p>24 A. Regarding a promise. I believe</p> <p>25 you misspoke.</p>	<p style="text-align: right;">Page 273</p> <p>1 P. Sutton</p> <p>2 <b>Q. -- will you read that into the</b></p> <p>3 <b>record, please.</b></p> <p>4 A. This is page 2, the last sentence</p> <p>5 of the very first paragraph, yes?</p> <p>6 <b>Q. Will you read that in the record,</b></p> <p>7 <b>please.</b></p> <p>8 A. Yes.</p> <p>9 "We, namely Pepe &amp; Hazard" --</p> <p>10 <b>Q. Does it say -- stop.</b></p> <p>11 A. Please let me finish -- "will</p> <p>12 notify you regarding payment of the</p> <p>13 maintenance fees several months before they</p> <p>14 are due." Signed by Todd S. Sharinn on</p> <p>15 behalf of Pepe &amp; Hazard.</p> <p>16 <b>Q. Where in that last sentence does</b></p> <p>17 <b>it say we, meaning Pepe &amp; Hazard, will</b></p> <p>18 <b>notify you regarding payment?</b></p> <p>19 A. I'll refer you to the upper left</p> <p>20 corner of the very first page of Exhibit</p> <p>21 21, Pepe &amp; Hazard, this letter is being</p> <p>22 written on behalf of Pepe &amp; Hazard by Todd</p> <p>23 S. Sharinn.</p> <p>24 <b>Q. So were you aware that Todd S.</b></p> <p>25 <b>Sharinn had written this letter when he was</b></p>

70 (Pages 274 to 277)

<p style="text-align: right;">Page 274</p> <p>1 <b>P. Sutton</b>  2 <b>hired by Greenberg Traurig?</b>  3 A. I had no personal information  4 about this letter at or about the time that  5 Todd Sharinn was hired, and I don't believe  6 I've seen anything in our records that  7 would indicate an assumption of  8 responsibility that may have been  9 undertaken by Pepe &amp; Hazard.  10 MR. LODEN: Objection.  11 A. That was part of our engagement.  12 MR. LODEN: Objection.  13 Nonresponsive. Move to strike.  14 BY MR. LODEN:  15 <b>Q. Mr. Sutton, are you aware of Todd</b>  16 <b>Sharinn ever telling Quickie that Greenberg</b>  17 <b>Traurig would not monitor the maintenance</b>  18 <b>fee deadlines after Todd moved to</b>  19 <b>Greenberg?</b>  20 A. I can't answer your question  21 because the premise is not accurate.  22 <b>Q. What premise is not accurate?</b>  23 A. I'm not aware of any personal  24 promise made by Todd Sharinn. I see  25 reference to a statement in Exhibit 21,</p>	<p style="text-align: right;">Page 276</p> <p>1 <b>P. Sutton</b>  2 A. The premise of your question is  3 ridiculous in the sense that it suggests an  4 obligation on the part of Greenberg Traurig  5 to honor an obligation of another law firm  6 that previously represented Quickie. I  7 really don't understand the premise or the  8 content of your question. It makes no  9 sense.  10 <b>Q. Maybe you're misunderstanding my</b>  11 <b>question.</b>  12 A. I don't think so.  13 <b>Q. Well, let me try it again.</b>  14 <b>As you sit here today, do you</b>  15 <b>know whether Todd Sharinn ever told Quickie</b>  16 <b>that Greenberg would not provide the notice</b>  17 <b>of maintenance fees that you say Pepe &amp;</b>  18 <b>Hazard committed to provide as reflected in</b>  19 <b>Exhibit 21?</b>  20 MR. CHU: Objection.  21 A. You've mischaracterized my  22 testimony and --  23 <b>Q. I'm asking --</b>  24 A. Please let me finish. If you  25 don't get the answer you like, you</p>
<p style="text-align: right;">Page 275</p> <p>1 P. Sutton  2 where is reference by Mr. Sharinn about  3 Pepe &amp; Hazard's undertaking  4 responsibilities during Pepe &amp; Hazard's  5 representation of Quickie, but I see  6 nothing about any that would suggest any  7 personal assumption of responsibility by  8 Todd Sharinn individually.  9 <b>Q. Are you aware of Todd Sharinn</b>  10 <b>ever telling Quickie that Pepe &amp; Hazard's</b>  11 <b>responsibility for providing notice about</b>  12 <b>maintenance fees was not being transferred</b>  13 <b>to Greenberg when Todd moved to Greenberg?</b>  14 A. Are you talking about prior to  15 the time that Todd Sharinn joined Greenberg  16 Traurig?  17 <b>Q. I'm talking about at the time he</b>  18 <b>joined Greenberg Traurig.</b>  19 A. I don't recall knowing or meeting  20 Todd Sharinn at or about the time he was  21 hired by Greenberg Traurig.  22 <b>Q. At any time, are you aware of</b>  23 <b>Todd Sharinn telling Quickie that Greenberg</b>  24 <b>Traurig would not honor the commitment that</b>  25 <b>you say Pepe &amp; Hazard made in Exhibit 21?</b></p>	<p style="text-align: right;">Page 277</p> <p>1 P. Sutton  2 interrupt me and don't permit me to finish.  3 Please.  4 The premise of your question  5 makes no sense, is not based on anything  6 I'm aware of, and I respond to this last  7 question that you've asked me with the same  8 response I just gave you to the next  9 previous question.  10 <b>Q. Which is what?</b>  11 THE WITNESS: Madam Reporter,  12 please read that last response to the  13 prior question to me.  14 (Whereupon, the requested portion  15 was read back by the court reporter.)  16 A. That same response applies and is  17 responsive to the last question that you've  18 asked me.  19 <b>Q. Well, didn't you and I agree</b>  20 <b>earlier today that at least as of October</b>  21 <b>2002 Greenberg Traurig actually did have</b>  22 <b>that obligation to provide notice of</b>  23 <b>maintenance fees due to Quickie, right --</b>  24 <b>that's the date that Mr. Sharinn told the</b>  25 <b>Patent and Trademark Office that he was the</b></p>

71 (Pages 278 to 281)

<p style="text-align: right;">Page 278</p> <p>1 <b>P. Sutton</b>  2 <b>notice in Exhibit 7?</b>  3 MR. CHU: Objection.  4 A. You are confusing -- your prior  5 questions had to do with an obligation of  6 Pepe &amp; Hazard that might or might not have  7 existed while they represented Quickie.  8 There is nothing that I'm aware of, and  9 it's ridiculous to suggest that Greenberg  10 Traurig would assume a questionable  11 obligation that may have been undertaken by  12 Pepe &amp; Hazard prior to Greenberg's  13 representation of Quickie.  14 It makes no sense whatsoever and  15 the premise of your question, frankly, is  16 ridiculous. I'm sorry to use terms that  17 strong, but where you're going makes no  18 sense whatsoever and the question makes no  19 sense.  20 Until you showed me Exhibit 21, I  21 never testified about Pepe &amp; Hazard in  22 connection with any obligation possible or  23 otherwise that they might have undertaken  24 to Quickie. So I just think my response to  25 the prior question is appropriate here as</p>	<p style="text-align: right;">Page 280</p> <p>1 P. Sutton  2 <b>Q. The responsibilities to your</b>  3 <b>client Leviton while you were at Thelen,</b>  4 <b>did those responsibilities carryover to</b>  5 <b>your client at Greenberg?</b>  6 MR. CHU: Objection.  7 A. If, and I don't recall any, there  8 were any obligations undertaken by Thelen  9 to Leviton while Thelen represented  10 Leviton, those would not have been  11 transferred to Greenberg Traurig unless  12 Greenberg Traurig agreed to assume those  13 responsibilities if there were any, so that  14 the premise of your question makes no  15 sense.  16 These are not -- you're  17 suggesting that Todd Sharinn individually  18 or personally separately represented  19 Quickie or that his reference to  20 question -- who do you think "we" is in  21 Exhibit 21 on the second page?  22 <b>Q. I don't know.</b>  23 A. Oh, I do know.  24 <b>Q. Let me ask, let me ask a</b>  25 <b>question --</b></p>
<p style="text-align: right;">Page 279</p> <p>1 P. Sutton  2 well.  3 MR. SCOTT: I think the entire  4 response was ridiculous and I move to  5 strike as nonresponsive.  6 MR. LODEN: As I do. Thank you.  7 BY MR. LODEN:  8 <b>Q. When you testified earlier this</b>  9 <b>morning that Leviton moved from Thelen to</b>  10 <b>Greenberg, when you moved to Thelen to</b>  11 <b>Greenberg -- you took that client with you,</b>  12 <b>correct?</b>  13 A. The client chose for Greenberg  14 Traurig to represent it at the time I moved  15 from Thelen to Greenberg Traurig.  16 <b>Q. And the existing matters that you</b>  17 <b>were representing Leviton on while you were</b>  18 <b>at Thelen, is it your testimony that you</b>  19 <b>had no further responsibility for those</b>  20 <b>matters after you moved to Greenberg</b>  21 <b>because those were responsibilities taken</b>  22 <b>on while you were at your prior firm, or</b>  23 <b>did the responsibilities move with you?</b>  24 A. I don't understand your question  25 at all.</p>	<p style="text-align: right;">Page 281</p> <p>1 <b>P. Sutton</b>  2 A. I do know.  3 <b>Q. How do you know that?</b>  4 A. The "we" is -- because it's  5 written on the Pepe &amp; Hazard letterhead and  6 the "we" relates to that law firm.  7 <b>Q. Has Todd Sharinn told you that</b>  8 <b>the "we" relates to Pepe &amp; Hazard?</b>  9 A. He may have, but I don't recall.  10 MR. CHU: I just want to caution  11 you that if it involves conversations  12 while in the presence of lawyers in  13 discussions, then that would be  14 privileged.  15 THE WITNESS: Okay.  16 A. I have no response to that  17 question. I have no information to provide  18 you in response to that question other than  19 what would come under attorney-client  20 privilege.  21 MR. SCOTT: Just so we're clear,  22 conversations between Todd Sharinn and  23 Mr. Sutton, whether or not in the  24 presence of lawyers, are not  25 privileged if they're not seeking or</p>

72 (Pages 282 to 285)

<p style="text-align: right;">Page 282</p> <p>1 P. Sutton 2 receiving advice of counsel. 3 MR. CHU: Well -- 4 MR. SCOTT: I don't want to get 5 into it. You've taken the 6 instruction. You're not answering. 7 I'm just -- 8 MR. CHU: And when I mean 9 counsel, I mean counsel in this 10 litigation. 11 MR. SCOTT: I know what you 12 meant, and he's a lawyer and I think 13 he understood what you meant, so.... 14 MR. LODEN: Right. 15 THE WITNESS: How much time has 16 elapsed since the start of this 17 deposition? 18 MR. CHU: We started at 9:30 19 sharp pretty much. 20 MR. SCOTT: Let's take a quick 21 break. 22 (Recess taken from 5:12 p.m. to 23 5:16 p.m.) 24 BY MR. LODEN: 25 <b>Q. I don't want to rehash the entire</b></p>	<p style="text-align: right;">Page 284</p> <p>1 P. Sutton 2 where there was an assumption of another 3 law firm's responsibilities of the type you 4 have suggested which I don't really 5 understand. 6 <b>Q. No, you just restated in probably</b> 7 <b>more clear terms what I just restated, that</b> 8 <b>that's Greenberg's position, that Greenberg</b> 9 <b>did not assume any obligations taken on by</b> 10 <b>Pepe &amp; Hazard?</b> 11 A. I just mischaracterized what I 12 said. 13 <b>Q. Okay. You would agree with me,</b> 14 <b>though --</b> 15 A. You're asking me about 16 Greenberg's position. I'm not here to give 17 you testimony about Greenberg's position. 18 I'm here to give you testimony about facts 19 and to respond to questions about 20 documents. I'm not here to argue this 21 litigation. I'm not the attorney handling 22 that. We have outside counsel handling 23 that. I think that's where you're 24 confused. 25 <b>Q. Okay.</b></p>
<p style="text-align: right;">Page 283</p> <p>1 P. Sutton 2 deposition, Mr. Sutton, but I want to make 3 sure that the record is clear. I 4 understand that Greenberg's position is 5 that they did not assume Pepe &amp; Hazard's 6 promise to provide advanced notice of the 7 maintenance fees becoming due, I understand 8 that that's -- 9 A. That's not accurate. What you 10 just stated is not accurate. 11 <b>Q. How is that not accurate?</b> 12 A. It assumes facts not in evidence. 13 <b>Q. Well, did or did not Greenberg</b> 14 <b>assume Pepe &amp; Hazard's statement that they</b> 15 <b>would provide notice before the maintenance</b> 16 <b>fees were due?</b> 17 A. I don't understand your question. 18 When -- 19 <b>Q. Look back at Exhibit 21. We just</b> 20 <b>went through, you told me --</b> 21 A. Greenberg Traurig has never 22 assumed any responsibilities undertaken by 23 Pepe &amp; Hazard. Greenberg Traurig was 24 separately engaged to perform legal 25 services, and I'm not aware of any instance</p>	<p style="text-align: right;">Page 285</p> <p>1 P. Sutton 2 So your testimony today then is 3 that Greenberg Traurig did not assume Pepe 4 &amp; Hazard's agreement, as you characterized 5 it, to provide notice before the 6 maintenance fees were due, that's your 7 testimony today? 8 A. That's not accurate, and it does 9 not properly characterize my testimony. 10 <b>Q. Well, please tell me what aspect</b> 11 <b>of Pepe &amp; Hazard's agreement to provide</b> 12 <b>advanced notice that Greenberg did assume?</b> 13 A. I cannot give you testimony about 14 obligations undertaken by Pepe &amp; Hazard, 15 okay. 16 <b>Q. I'm not asking for you to do</b> 17 <b>that.</b> 18 A. Yes, you are. Yes, you are. 19 <b>Q. I'm asking if Greenberg took on</b> 20 <b>those obligations.</b> 21 A. Give me a second. You are asking 22 me -- no matter what kind of words you are 23 couching in your question, I'm not here 24 with knowledge or ability to testify about 25 obligations undertaken by the firm of Pepe</p>

73 (Pages 286 to 289)

<p style="text-align: right;">Page 286</p> <p>1 P. Sutton</p> <p>2 &amp; Hazard, if any, to Quickie prior to</p> <p>3 Greenberg Traurig's representation of</p> <p>4 Quickie.</p> <p>5 Your questions really are, I'm</p> <p>6 sorry, but make no sense.</p> <p>7 <b>Q. I'm trying to find common ground</b></p> <p>8 <b>with you, Mr. Sutton.</b></p> <p>9 A. No. This is not a negotiation to</p> <p>10 find common ground. I'm here to give you</p> <p>11 truthful testimony.</p> <p>12 <b>Q. Okay. Well, let's see if this</b></p> <p>13 <b>one works for you then.</b></p> <p>14 <b>Would you agree with me that when</b></p> <p>15 <b>the file was transferred from Pepe &amp; Hazard</b></p> <p>16 <b>to Greenberg Traurig, Greenberg Traurig had</b></p> <p>17 <b>no obligation to provide advanced notice of</b></p> <p>18 <b>maintenance fees for the '160 Patent?</b></p> <p>19 A. I don't understand your question.</p> <p>20 I'm sorry.</p> <p>21 <b>Q. You know --</b></p> <p>22 A. At the time that Greenberg</p> <p>23 Traurig was retained by Quickie, it</p> <p>24 undertook obligations to perform legal</p> <p>25 services to Quickie, and from that date</p>	<p style="text-align: right;">Page 288</p> <p>1 <b>P. Sutton</b></p> <p>2 A. Well --</p> <p>3 MR. CHU: I'm going to object to</p> <p>4 that because I think his testimony is</p> <p>5 very clear.</p> <p>6 A. I gave you long testimony</p> <p>7 regarding what was in our, the nature of</p> <p>8 our docketing system. So I'm sorry, but --</p> <p>9 <b>Q. So has any of the testimony with</b></p> <p>10 <b>respect to that topic that you gave earlier</b></p> <p>11 <b>today, has it changed?</b></p> <p>12 MR. CHU: Objection. I'm not</p> <p>13 sure I understand.</p> <p>14 A. Okay. Let me try to --</p> <p>15 MR. SCOTT: I thought it was</p> <p>16 perfectly clear.</p> <p>17 MR. CHU: No, I do not</p> <p>18 understand.</p> <p>19 A. Are you asking me to either</p> <p>20 correct or supplement my prior testimony?</p> <p>21 Yes or no?</p> <p>22 <b>Q. What I'm asking is you would</b></p> <p>23 <b>agree with me Greenberg Traurig did take on</b></p> <p>24 <b>the responsibility for monitoring and</b></p> <p>25 <b>docketing maintenance fee deadlines on the</b></p>
<p style="text-align: right;">Page 287</p> <p>1 P. Sutton</p> <p>2 forward I'm not aware of any agreement.</p> <p>3 It's ridiculous to suggest an</p> <p>4 agreement that Greenberg Traurig undertook</p> <p>5 obligations of a prior firm. It really</p> <p>6 makes no sense, I'm sorry.</p> <p>7 <b>Q. I'm not suggesting that they did.</b></p> <p>8 A. I'm sorry, but you did suggest</p> <p>9 that we did, and I'm sorry, but I cannot</p> <p>10 let you -- I must disabuse you of that</p> <p>11 concept. It just makes no sense.</p> <p>12 <b>Q. You're misunderstanding my</b></p> <p>13 <b>question, but I'll move on.</b></p> <p>14 <b>At some point, though, you would</b></p> <p>15 <b>agree with me Greenberg Traurig did take on</b></p> <p>16 <b>the responsibility for monitoring and</b></p> <p>17 <b>docketing maintenance fee deadlines on the</b></p> <p>18 <b>'160 Patent, correct?</b></p> <p>19 A. You've asked me those questions</p> <p>20 and I gave you answers previously today and</p> <p>21 I'm not going to repeat them again. I</p> <p>22 mean, why go back over stuff that you've</p> <p>23 asked me and I've answered?</p> <p>24 <b>Q. I'm trying to make sure that your</b></p> <p>25 <b>testimony is clear.</b></p>	<p style="text-align: right;">Page 289</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>'160 Patent at some point, and your</b></p> <p>3 <b>response was you've already asked me those</b></p> <p>4 <b>questions and I'm not going to repeat my</b></p> <p>5 <b>answers again.</b></p> <p>6 <b>So my question is: Do you have</b></p> <p>7 <b>any reason to supplement those prior</b></p> <p>8 <b>answers, or do you believe that they are</b></p> <p>9 <b>still accurate and correct, as you sit here</b></p> <p>10 <b>right now?</b></p> <p>11 A. To augment and supplement my</p> <p>12 prior testimony, all of the data</p> <p>13 transferred from the PATS computerized</p> <p>14 docketing system to the DIAMS computerized</p> <p>15 docketing system, all of that data was</p> <p>16 transferred so that what was put into DIAMS</p> <p>17 corresponded to what was previously in the</p> <p>18 PATS system. That's number one.</p> <p>19 Number two, to the extent that Al</p> <p>20 Jacobs' name appears on Exhibit 8, his name</p> <p>21 was added in connection with administrative</p> <p>22 responsibilities.</p> <p>23 Three, at the time that Greenberg</p> <p>24 Traurig's Power of Attorney was revoked, it</p> <p>25 is my view that it had no further</p>

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<p style="text-align: right;">Page 290</p> <p>1 P. Sutton</p> <p>2 responsibility to Quickie and that that</p> <p>3 responsibility lay with Thelen.</p> <p>4 Other than that, I don't wish at</p> <p>5 the present time to augment or correct or</p> <p>6 to supplement any of my testimony that I</p> <p>7 gave previously today.</p> <p>8 <b>Q. Nothing else at all?</b></p> <p>9 A. If I have additional information</p> <p>10 to share with you, I will, I'll feel</p> <p>11 comfortable offering that to you and you</p> <p>12 can take it, if you're willing.</p> <p>13 MR. LODEN: I'll ask the reporter</p> <p>14 to mark Exhibit 22.</p> <p>15 (Exhibit 22, Document, marked for</p> <p>16 identification, as of this date.)</p> <p>17 BY MR. LODEN:</p> <p>18 <b>Q. Mr. Sutton, you've just been</b></p> <p>19 <b>handed what's been marked as Exhibit 22.</b></p> <p>20 <b>Have you seen this document</b></p> <p>21 <b>before?</b></p> <p>22 A. I believe I have seen Exhibit 22</p> <p>23 prior to today.</p> <p>24 <b>Q. When did you last see Exhibit 22?</b></p> <p>25 A. I do not recall.</p>	<p style="text-align: right;">Page 292</p> <p>1 P. Sutton</p> <p>2 connection with the income derived from</p> <p>3 handling matters that we were handling.</p> <p>4 The fact that -- let me give you</p> <p>5 those. The fact that Mark Evens asked to</p> <p>6 monitor and counsel Quickie in connection</p> <p>7 with the Medtronic and 160 matters that we</p> <p>8 were handling for Quickie and that Steve</p> <p>9 Colvin asked us to cooperate and to,</p> <p>10 cooperate with him in that regard.</p> <p>11 The communications between Mark</p> <p>12 Evens, myself and Mark Evens and Todd</p> <p>13 Sharinn gave that indication, the fact that</p> <p>14 Mark Evens of Thelen sat at the table, at</p> <p>15 counsel's table during the Markman Hearing</p> <p>16 is another instance.</p> <p>17 The fact that Allan Fell told</p> <p>18 Todd Sharinn the day after the Markman</p> <p>19 Hearing, September 5, 2002, that Thelen was</p> <p>20 going to replace Greenberg Traurig.</p> <p>21 This Exhibit 22, the October 15,</p> <p>22 2002 letter, I think, there were</p> <p>23 indications over several months that this</p> <p>24 was likely going to happen, notwithstanding</p> <p>25 what Allan Fell refers to in the next to</p>
<p style="text-align: right;">Page 291</p> <p>1 P. Sutton</p> <p>2 <b>Q. Did you look at it during your</b></p> <p>3 <b>preparation for today?</b></p> <p>4 A. I may have. I reviewed many,</p> <p>5 many documents so that I may have, but I</p> <p>6 don't recall.</p> <p>7 <b>Q. Do you see in the regarding line</b></p> <p>8 <b>it references Quickie, LLC versus</b></p> <p>9 <b>Medtronic, do you see that?</b></p> <p>10 A. I do.</p> <p>11 <b>Q. And then Civil Action Number</b></p> <p>12 <b>02-CV-1157, do you see that?</b></p> <p>13 A. I see those numbers.</p> <p>14 <b>Q. Do you recall if that's the case</b></p> <p>15 <b>number assigned to the Quickie versus</b></p> <p>16 <b>Medtronic litigation?</b></p> <p>17 A. I do not recall from memory the</p> <p>18 civil action number.</p> <p>19 <b>Q. How did you become aware that</b></p> <p>20 <b>Thelen Reid was going to be substituted for</b></p> <p>21 <b>Greenberg Traurig in that litigation?</b></p> <p>22 A. I became aware through a number</p> <p>23 of instances of events. I became aware</p> <p>24 from Steve Colvin that he wanted to help</p> <p>25 his family's relative Mark Evens in</p>	<p style="text-align: right;">Page 293</p> <p>1 P. Sutton</p> <p>2 last paragraph, "I want to personally thank</p> <p>3 you for the superb job you have done in</p> <p>4 litigating this matter."</p> <p>5 If you're doing a superb job, you</p> <p>6 don't transfer the work to another firm,</p> <p>7 except under special circumstances such as</p> <p>8 this, where he wanted to help one of his</p> <p>9 relatives.</p> <p>10 <b>Q. Allan Fell wanted to help one of</b></p> <p>11 <b>his relatives?</b></p> <p>12 A. Steve Colvin and Quickie wanted</p> <p>13 to help Mark Evens, who was a relative of</p> <p>14 Stephen Colvin's family.</p> <p>15 <b>Q. And how did you know that</b></p> <p>16 <b>Dr. Colvin had that desire?</b></p> <p>17 A. He personally told that to me</p> <p>18 himself.</p> <p>19 <b>Q. In person or over the phone?</b></p> <p>20 A. Possibly both. He shared a</p> <p>21 number of things with me and I shared a</p> <p>22 number of things with him in person and</p> <p>23 over the phone, if you're interested in</p> <p>24 what those were.</p> <p>25 <b>Q. When did those conversations take</b></p>



75 (Pages 294 to 297)

<p style="text-align: right;">Page 294</p> <p>1 <b>P. Sutton</b>  2 <b>place?</b>  3 A. They took place, they began  4 during the summer of 2001 and occurred then  5 and thereafter.  6 <b>Q. So when did Dr. Colvin tell you</b>  7 <b>that he wanted to give the income from this</b>  8 <b>litigation to his family member?</b>  9 A. Well, he let us know when I very  10 first met Dr. Colvin in person at his  11 offices at the hospital, I think it was on  12 a weekend, his office had a remarkable view  13 because it was a clear day, a view of the  14 East River because I'm a boater, I'm a  15 sailor -- he indicated that he was  16 considering giving the matter to Mark  17 Evens.  18 I informed him that I knew Mark  19 Evens, that he's a former partner of mine  20 and that I headed up the practice that Mark  21 was part of, and I gave him information  22 regarding the number of litigations that I  23 was involved in, and it was the gray hair  24 or no hair experience factor that I think  25 influenced Steve, that he indicated to that</p>	<p style="text-align: right;">Page 296</p> <p>1 <b>P. Sutton</b>  2 product that Medtronic was marketing and  3 there were genuine questions about how the  4 claims would be interpreted and whether or  5 not there would be an ultimate finding of  6 infringement, and I explained to him about  7 the Markman Hearing and how there would be  8 a de novo Markman Hearing by the Court of  9 Appeals for the Federal Circuit, so that he  10 understood that these cases are often  11 litigated through appeal because sometimes  12 the district court judge's decision on  13 Markman is disregarded by the Court of  14 Appeals for the Federal Circuit.  15 So I gave him explanations as to  16 what to expect from the litigation because  17 I don't believe he had ever been through  18 one of these patent infringement fights  19 previously, and there were other things  20 that we discussed, but why don't you ask me  21 your next question.  22 <b>Q. My next question is anything else</b>  23 <b>that you discussed?</b>  24 A. Yes. I got into discussions  25 about damages because sometimes you can</p>
<p style="text-align: right;">Page 295</p> <p>1 <b>P. Sutton</b>  2 effect that he wanted us to negotiate with  3 Medtronic, see if we could settle it, if  4 not to litigate.  5 He also indicated that he had a  6 very fine relationship with Medtronic where  7 they relied on him for ideas and inventions  8 and that he felt that his existing  9 relationship with Medtronic would influence  10 them in terms of Medtronic's actions and  11 possible settlement.  12 <b>Q. Who else was present when</b>  13 <b>Dr. Colvin --</b>  14 A. I didn't finish. You want to  15 know the remainder of the conversation?  16 <b>Q. Sure.</b>  17 A. I indicated to Dr. Colvin the  18 potential problems associated with, that  19 there were no guarantee on the outcome of a  20 fight with Medtronic, that they had  21 resources to put into the defense, and I  22 indicated to him that there were questions  23 that they would raise about infringement  24 because the patent, the '160 Patent has a  25 focus which was not identical with the</p>	<p style="text-align: right;">Page 297</p> <p>1 <b>P. Sutton</b>  2 win, but the attorneys' fees can exceed the  3 amount of damages that you can recover.  4 So we discussed -- he had a hope  5 that he would recover 8 figures, \$10  6 million or more from Medtronic. I tried to  7 temper -- managing client expectations is a  8 tricky business and not realizing that the  9 patent would be gutted and rendered almost  10 worthless by the re-examination, I tried to  11 prepare him for the possibility that you  12 could win, but that you might not wind up  13 with anything because we were not taking  14 this case on a contingency basis, this was  15 going to be on a fee basis.  16 We discussed -- I asked him  17 whether he had licensed any other parties,  18 and he indicated no, he had not, and I  19 explained to him that if he had that that  20 would enhance his chances of success in the  21 court.  22 I asked him if he ever marketed a  23 product covered by the '160 Patent because  24 that would enhance his chances in the  25 court. He said no.</p>

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<p style="text-align: right;">Page 298</p> <p>1 P. Sutton</p> <p>2 We discussed the inside and</p> <p>3 outside the body matter.</p> <p>4 I also had discussions with him</p> <p>5 regarding my negotiations with Medtronic</p> <p>6 because Medtronic did offer to settle the</p> <p>7 dispute, but I believe that Hal Patton as</p> <p>8 part of the Medtronic offer to Quickie</p> <p>9 capped the amount that Quickie would</p> <p>10 realize at \$185,000, if my memory serves me</p> <p>11 right, which if the court felt that was a</p> <p>12 true measure of damages, that would limit</p> <p>13 his recovery and that the attorneys' fees</p> <p>14 would far exceed that.</p> <p>15 So we discussed these types of</p> <p>16 matters in an open and candid way with one</p> <p>17 another, both in person and from time to</p> <p>18 time by phone thereafter.</p> <p>19 <b>Q. Well, I thought we were talking</b></p> <p>20 <b>about the conversation you had at his</b></p> <p>21 <b>office on the weekend over on the East</b></p> <p>22 <b>Side?</b></p> <p>23 A. Everything I just testified, the</p> <p>24 time at the weekend, my personal visit to</p> <p>25 his office with Todd Sharinn, the three of</p>	<p style="text-align: right;">Page 300</p> <p>1 P. Sutton</p> <p>2 that he informed us or me that he had, he</p> <p>3 knew somebody affiliated with his family</p> <p>4 who was in the business of litigating</p> <p>5 patents, namely Mark Evens, and it was just</p> <p>6 a coincide that Mark and I knew each other</p> <p>7 because we were at the same firm. He came</p> <p>8 in while I was heading up the IP practice</p> <p>9 there.</p> <p>10 <b>Q. What I'm trying to find out,</b></p> <p>11 <b>though, is when did Dr. Colvin tell you I</b></p> <p>12 <b>want to give the work to Mark because I</b></p> <p>13 <b>want to give him the money?</b></p> <p>14 A. I had the feeling from the very</p> <p>15 beginning, including that very first</p> <p>16 meeting, that there was a possibility,</p> <p>17 possibly a strong possibility that at any</p> <p>18 time this work would or could be</p> <p>19 transferred to Mark Evens because of the</p> <p>20 nature of the conversations I've described.</p> <p>21 MR. SCOTT: Just hang on a</p> <p>22 second. Just because I want to speed</p> <p>23 this up.</p> <p>24 MR. LODEN: Thank you.</p> <p>25 MR. SCOTT: With all due respect,</p>
<p style="text-align: right;">Page 299</p> <p>1 P. Sutton</p> <p>2 us were in the room together -- what I just</p> <p>3 testified to was discussed some in person,</p> <p>4 some by phone. Some of those were</p> <p>5 discussed between the two of us while I was</p> <p>6 negotiating with Hal Patton at Medtronic.</p> <p>7 <b>Q. On the phone conversations, was</b></p> <p>8 <b>anyone else on the phone other than you and</b></p> <p>9 <b>Dr. Colvin?</b></p> <p>10 A. I don't recall anyone else being</p> <p>11 on the phone.</p> <p>12 <b>Q. And you've mentioned that Todd</b></p> <p>13 <b>Sharinn accompanied you to Dr. Colvin's</b></p> <p>14 <b>office --</b></p> <p>15 A. Actually, he brought me to</p> <p>16 Dr. Colvin's office to introduce me to him</p> <p>17 because he was familiar with Dr. Colvin. I</p> <p>18 had not met him before. Although I had</p> <p>19 heard of his reputation as a thoracic</p> <p>20 surgeon.</p> <p>21 <b>Q. And was it at that meeting that</b></p> <p>22 <b>Dr. Colvin informed you that he wanted to</b></p> <p>23 <b>transfer the file to Mark Evens to give</b></p> <p>24 <b>Mr. Evens the revenue?</b></p> <p>25 A. I believe it was at that meeting</p>	<p style="text-align: right;">Page 301</p> <p>1 P. Sutton</p> <p>2 Mr. Sutton, we let you go on and give</p> <p>3 your jury argument and all that. His</p> <p>4 question was simply when did</p> <p>5 Dr. Colvin tell you that he wanted to</p> <p>6 give the case to Evens and you went on</p> <p>7 to I had this feeling. So I'm just</p> <p>8 asking you --</p> <p>9 THE WITNESS: Okay, it began with</p> <p>10 his asking us to permit Mark to</p> <p>11 monitor it and that we should</p> <p>12 cooperate with Mark and give him</p> <p>13 copies of documents so that he could</p> <p>14 independently guide and counsel and</p> <p>15 represent Dr. Colvin and Quickie.</p> <p>16 So it was not a sudden thing that</p> <p>17 occurred. It occurred over time where</p> <p>18 initially he may be aware of Mark</p> <p>19 Evens and the relationship, then</p> <p>20 asking us to share and to permit Mark</p> <p>21 to monitor, and then his indicating</p> <p>22 that he wanted to help Mark.</p> <p>23 BY MR. LODEN:</p> <p>24 <b>Q. And how did he indicate that he</b></p> <p>25 <b>wanted to help Mark?</b></p>



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<p style="text-align: right;">Page 302</p> <p>1 <b>P. Sutton</b></p> <p>2 A. By making statements to the</p> <p>3 effect that he'd like Mark to get involved,</p> <p>4 words to that effect, which to me I</p> <p>5 interpreted to mean Mark would take an</p> <p>6 increasing role and an increasingly</p> <p>7 important role headed towards his taking</p> <p>8 over the case.</p> <p>9 <b>Q. So then Dr. Colvin never actually</b></p> <p>10 <b>said I want Mark to get involved because I</b></p> <p>11 <b>want him to get the fees for this case?</b></p> <p>12 A. I don't remember the specific</p> <p>13 words that Dr. Colvin used, but that's my</p> <p>14 interpretation because there would be no</p> <p>15 other reason for Mark to be involved, if</p> <p>16 the client thought our work was superb and</p> <p>17 we had more experience than Mark, and Mark,</p> <p>18 I don't know that Mark has a technical</p> <p>19 background. He has handled litigation, but</p> <p>20 I believe that that was the obvious reason.</p> <p>21 MR. LODEN: If I could get the</p> <p>22 reporter to mark Exhibit 23, please.</p> <p>23 (Exhibit 23, Fax dated 11/11/02,</p> <p>24 marked for identification, as of this</p> <p>25 date.)</p>	<p style="text-align: right;">Page 304</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>questions about it. If you want to go off</b></p> <p>3 <b>the record and read it in detail, that's</b></p> <p>4 <b>fine, but my questions are very simple.</b></p> <p>5 A. I'm just taking two minutes to</p> <p>6 review it.</p> <p>7 MR. LODEN: Let's go off the</p> <p>8 record then for two minutes.</p> <p>9 A. No, I don't want to go off the</p> <p>10 record.</p> <p>11 <b>Q. Well, I don't want --</b></p> <p>12 A. Then why don't you ask me a</p> <p>13 question, because let's see if I need to</p> <p>14 read it to answer it.</p> <p>15 <b>Q. That's fine.</b></p> <p>16 <b>The RE line refers to Quickie</b></p> <p>17 <b>versus Medtronics, Southern District of New</b></p> <p>18 <b>York.</b></p> <p>19 <b>Do you see that?</b></p> <p>20 A. I see those words.</p> <p>21 <b>Q. And do you see the numbers below</b></p> <p>22 <b>it, 02-Civ-1157?</b></p> <p>23 A. I see a civil action number</p> <p>24 ending in 1157.</p> <p>25 <b>Q. Looking back at Exhibit 22,</b></p>
<p style="text-align: right;">Page 303</p> <p>1 <b>P. Sutton</b></p> <p>2 A. I did forget to mention one</p> <p>3 thing, something that I discussed with</p> <p>4 Dr. Colvin and that is Hal Patton at</p> <p>5 Medtronic during our negotiations indicated</p> <p>6 that he felt it would be relatively easy</p> <p>7 for Medtronic to alter the design of their</p> <p>8 product to in effect design around the '160</p> <p>9 Patent, that they preferred not to do that,</p> <p>10 but that was one of their options that they</p> <p>11 considered an active option.</p> <p>12 He indicated that he felt that</p> <p>13 claims were limited to a point where he</p> <p>14 would be able to do that without</p> <p>15 infringing, and I did share that with</p> <p>16 Dr. Colvin.</p> <p>17 <b>Q. Okay, thank you.</b></p> <p>18 <b>Exhibit 23, which I believe you</b></p> <p>19 <b>now have in front of, Mr. Sutton --</b></p> <p>20 A. I do.</p> <p>21 <b>Q. -- is a three-page fax that</b></p> <p>22 <b>appears to be from Mark Evens to Todd</b></p> <p>23 <b>Sharinn dated October 11, 2002.</b></p> <p>24 <b>Have you ever seen this document</b></p> <p>25 <b>before? I'm not going to ask you detailed</b></p>	<p style="text-align: right;">Page 305</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>that's the same civil action number</b></p> <p>3 <b>referenced in the top of Mr. Fell's</b></p> <p>4 <b>correspondence to Todd Sharinn, correct?</b></p> <p>5 A. The number is not identical, but</p> <p>6 parts of it are.</p> <p>7 <b>Q. How is the number not identical?</b></p> <p>8 A. One says 02-CV-1157 on Exhibit</p> <p>9 22. On Exhibit 23, it says 02-Civ-1157 and</p> <p>10 then the initials of the judge.</p> <p>11 <b>Q. Do you understand those to refer</b></p> <p>12 <b>to the same case?</b></p> <p>13 A. They appear to be a reference to</p> <p>14 the same civil action number.</p> <p>15 <b>Q. Looking at the first sentence of</b></p> <p>16 <b>the correspondence in Exhibit 23, it</b></p> <p>17 <b>appears that Mr. Evens is formally</b></p> <p>18 <b>requesting that Todd Sharinn transfer all</b></p> <p>19 <b>of the litigation files in the</b></p> <p>20 <b>above-captioned action to our office in New</b></p> <p>21 <b>York as soon as possible.</b></p> <p>22 <b>Do you see that?</b></p> <p>23 A. I see the first sentence of</p> <p>24 exhibit, of the second page of Exhibit 23.</p> <p>25 <b>Q. Where he's asking for the</b></p>

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<p style="text-align: right;">Page 306</p> <p>1 <b>P. Sutton</b>  2 <b>litigation files in the above-captioned</b>  3 <b>action to be sent?</b>  4 A. I see that sentence.  5 MR. LODEN: If I can get the  6 reporter to mark Exhibit 24.  7 (Exhibit 24, Letter, marked for  8 identification, as of this date.)  9 BY MR. LODEN:  10 <b>Q. Do you have Exhibit 24 in front</b>  11 <b>of you?</b>  12 A. I have it in front of me.  13 <b>Q. Exhibit 24 appears to be a letter</b>  14 <b>from yourself.</b>  15 <b>Is that your signature there at</b>  16 <b>the bottom, Paul J. Sutton?</b>  17 A. It is, it appears to be my  18 signature, yes.  19 <b>Q. And you sent this letter to</b>  20 <b>Mr. Evens at Thelen Reid &amp; Priest?</b>  21 A. That's correct.  22 <b>Q. And the date you sent the letter</b>  23 <b>via fax and Federal Express was October 15,</b>  24 <b>2002?</b>  25 A. That's the date at the top of</p>	<p style="text-align: right;">Page 308</p> <p>1 P. Sutton  2 <b>Q. Okay.</b>  3 <b>Did he call you or did you call</b>  4 <b>him?</b>  5 A. I don't recall who initiated the  6 call.  7 <b>Q. Okay.</b>  8 <b>Do you recall why it is that if</b>  9 <b>Mr. Evens' correspondence in Exhibit 23 was</b>  10 <b>directed to Todd Sharinn why you ended up</b>  11 <b>talking to Mr. Evens about the file</b>  12 <b>transfer?</b>  13 A. Yes. Mark Evens was a former  14 partner of mine at Thelen. Part of my  15 intellectual property department. I had a  16 fine relationship with him. Frankly, I  17 welcomed the opportunity to say hello to  18 him because I hadn't spoken to him in a  19 while. So the transfer of these files  20 opened up an opportunity for me to say  21 hello to him or if he called me to have a  22 nice conversation with him.  23 <b>Q. Okay.</b>  24 <b>At the end of the first sentence</b>  25 <b>there you reference relevant files relating</b></p>
<p style="text-align: right;">Page 307</p> <p>1 P. Sutton  2 Exhibit 24.  3 <b>Q. And in the RE line for the</b>  4 <b>correspondence you referenced 02-Civ-1157.</b>  5 <b>Do you see that?</b>  6 A. I do.  7 <b>Q. Do you understand that to refer</b>  8 <b>to the same civil action number as</b>  9 <b>referenced in the correspondence in Exhibit</b>  10 <b>23?</b>  11 A. It appears to be the same civil  12 action number.  13 <b>Q. You reference, or you say that it</b>  14 <b>was good to talk to you this afternoon in</b>  15 <b>the first sentence.</b>  16 <b>Do you see that?</b>  17 A. Yes.  18 <b>Q. Tell me about that conversation</b>  19 <b>between yourself and Mr. Evens.</b>  20 <b>How did it occur; via phone or in</b>  21 <b>person?</b>  22 A. Oh, this would have been by  23 telephone.  24 <b>Q. Did he --</b>  25 A. Not in person.</p>	<p style="text-align: right;">Page 309</p> <p>1 <b>P. Sutton</b>  2 <b>to the above-referenced litigation.</b>  3 <b>Do you see that?</b>  4 A. I do.  5 <b>Q. What files are you referring to</b>  6 <b>there?</b>  7 A. Those would be physical files  8 that related to the Quickie versus  9 Medtronic litigation.  10 Prior to that time, Mark had  11 received from Todd Sharinn possibly the  12 entire file wrapper, I just don't know, but  13 certainly the information on the first  14 cover of the file wrapper with Todd's April  15 11, 2002 letter. So that anything that we  16 had that enabled us to prosecute this  17 litigation is something that we will have  18 turned over to Mark so that he could  19 continue that.  20 <b>Q. Do you know if the patent record</b>  21 <b>sheet was included in those files that were</b>  22 <b>transferred?</b>  23 A. Well, Mark had that information  24 on the patent record sheet already. I  25 don't know whether that was included in</p>

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<p style="text-align: right;">Page 310</p> <p>1 P. Sutton</p> <p>2 this because I don't believe I personally</p> <p>3 physically handled the assembly of the</p> <p>4 documents in the boxes.</p> <p>5 <b>Q. Who did handle that assembly?</b></p> <p>6 A. I don't know the specific name,</p> <p>7 but that would normally be done by a</p> <p>8 litigation, a patent litigation paralegal.</p> <p>9 <b>Q. Okay.</b></p> <p>10 <b>The first -- the paragraph that</b></p> <p>11 <b>begins finally, the last paragraph there --</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. You say, "Finally, for the</b></p> <p>14 <b>benefit of our mutual client Quickie" --</b></p> <p>15 <b>why was Quickie a mutual client if you were</b></p> <p>16 <b>transferring the litigation to Thelen?</b></p> <p>17 A. I don't understand your question.</p> <p>18 <b>Q. Well, was Quickie still a client</b></p> <p>19 <b>of yours after the litigation was</b></p> <p>20 <b>transferred to Thelen?</b></p> <p>21 A. The revocation of --</p> <p>22 <b>Q. I'm talking about in October '02.</b></p> <p>23 A. I know. The revocation of our</p> <p>24 Power of Attorney involving the '160 Patent</p> <p>25 I believe occurred in 2003.</p>	<p style="text-align: right;">Page 312</p> <p>1 <b>P. Sutton</b></p> <p>2 A. Likely not a carbon copy, but</p> <p>3 perhaps a photocopy.</p> <p>4 <b>Q. CC stands for carbon copy,</b></p> <p>5 <b>doesn't it, in your experience?</b></p> <p>6 A. We don't use carbon copies using</p> <p>7 carbon paper as of this date. So CC does</p> <p>8 not literally mean the use of carbon on one</p> <p>9 side of a piece of paper, but is used to</p> <p>10 suggest a true copy, whether by photocopy</p> <p>11 or otherwise.</p> <p>12 <b>Q. Mr. Sutton, as I understand that,</b></p> <p>13 <b>you're concerned about the time today,</b></p> <p>14 <b>frankly I am, too, but I really wish that,</b></p> <p>15 <b>you know, if you want to waste time</b></p> <p>16 <b>nitpicking with answers -- my question --</b></p> <p>17 <b>you provided a copy of this to Dr. Colvin,</b></p> <p>18 <b>right -- I mean, why does it take five</b></p> <p>19 <b>minutes to answer that question?</b></p> <p>20 MR. CHU: You have the answer.</p> <p>21 BY MR. LODEN:</p> <p>22 <b>Q. He provided a copy of it,</b></p> <p>23 <b>correct?</b></p> <p>24 A. I believe you're taking more time</p> <p>25 taking issue with me than I took to answer</p>
<p style="text-align: right;">Page 311</p> <p>1 P. Sutton</p> <p>2 <b>Q. Correct.</b></p> <p>3 A. So that, technically speaking,</p> <p>4 Quickie was still a client of GT and</p> <p>5 therefore they were a mutual client.</p> <p>6 <b>Q. Why do you say technically</b></p> <p>7 <b>speaking? I mean, you had other open</b></p> <p>8 <b>matters for other patents with Quickie,</b></p> <p>9 <b>right?</b></p> <p>10 A. I think you're substantiating</p> <p>11 what I just said.</p> <p>12 <b>Q. Well, you qualified it</b></p> <p>13 <b>technically. I'm just trying to understand</b></p> <p>14 <b>why you qualified it.</b></p> <p>15 A. Well, I don't understand why you</p> <p>16 would be asking why, why I would refer to</p> <p>17 our mutual client, when in fact at that</p> <p>18 point on October 15, 2002 Greenberg Traurig</p> <p>19 was representing Quickie and obviously Mark</p> <p>20 Evens of Thelen was representing Quickie.</p> <p>21 So that made the client mutual.</p> <p>22 <b>Q. Okay. Okay.</b></p> <p>23 <b>It looks like you provided a</b></p> <p>24 <b>carbon copy of this letter to Dr. Colvin.</b></p> <p>25 <b>Do you see that at the bottom?</b></p>	<p style="text-align: right;">Page 313</p> <p>1 P. Sutton</p> <p>2 your question.</p> <p>3 <b>Q. Okay.</b></p> <p>4 <b>Yes or no, you provided a copy of</b></p> <p>5 <b>this correspondence to Dr. Colvin?</b></p> <p>6 A. Exhibit 24 indicates that Steve</p> <p>7 Colvin was copied. I have no independent</p> <p>8 recollection as to whether or not, but I</p> <p>9 believe he was sent a photocopy of my</p> <p>10 letter.</p> <p>11 <b>Q. Why was he copied on this letter?</b></p> <p>12 A. To demonstrate to our client my</p> <p>13 cooperation with my former partner our</p> <p>14 firm's cooperation with Thelen so that the</p> <p>15 interests of Quickie would be served</p> <p>16 completely and fully.</p> <p>17 MR. LODEN: I'd ask the reporter</p> <p>18 to mark Exhibit 25, please.</p> <p>19 (Exhibit 25, Document, marked for</p> <p>20 identification, as of this date.)</p> <p>21 BY MR. LODEN:</p> <p>22 <b>Q. Do you have Exhibit 25 in front</b></p> <p>23 <b>of you?</b></p> <p>24 A. Here it is.</p> <p>25 <b>Q. Exhibit 25 is a 4-page document,</b></p>

80 (Pages 314 to 317)

<p style="text-align: right;">Page 314</p> <p>1 <b>P. Sutton</b>  2 <b>and it looks like it was faxed from Paul</b>  3 <b>Jergensen of Greenberg Traurig, that's the</b>  4 <b>paralegal you referred to previously, if</b>  5 <b>you look at the first page, fax cover page?</b>  6 A. I see the title paralegal under  7 his name.  8 <b>Q. I'm on the first page.</b>  9 A. I'm sorry, okay, Exhibit 25, I  10 see. Yes, I see Paul A. Jergensen.  11 <b>Q. And that is a paralegal at, he is</b>  12 <b>a paralegal at Greenberg Traurig, correct?</b>  13 A. I believe he was as of the date,  14 as of October 16, 2002.  15 <b>Q. And then turning to the second</b>  16 <b>page dated October 16, 2002, it looks like</b>  17 <b>he's writing to someone at Thelen Reid &amp;</b>  18 <b>Priest.</b>  19 <b>Do you see that?</b>  20 A. Yes.  21 <b>Q. And on the RE line he references</b>  22 <b>Quickie, LLC versus Medtronic, Inc.</b>  23 <b>Do you see that?</b>  24 MR. CHU: He hasn't got the page  25 yet, hold on.</p>	<p style="text-align: right;">Page 316</p> <p>1 <b>P. Sutton</b>  2 <b>Q. If you look back to Exhibit 13 --</b>  3 A. I have it in front of me.  4 <b>Q. That's the matter entitled</b>  5 <b>Quickie, LLC versus Medtronic, correct?</b>  6 A. Correct.  7 <b>Q. Did you ask Mr. Jergensen to send</b>  8 <b>this letter to Thelen Reid &amp; Priest?</b>  9 A. Actually, Mark Evens in Exhibit  10 23, his letter of October 11th, 2002 on the  11 fourth line in the first paragraph starting  12 in the third line, please send the file,  13 see attention of Shari Markovitz-Savit, it  14 was Mark Evens that requested that this be  15 done.  16 <b>Q. Well, he requested that be done</b>  17 <b>and he made that request to Todd Sharinn.</b>  18 <b>My question is how did Paul Jergensen end</b>  19 <b>up being the one to respond to Mr. Evens'</b>  20 <b>request?</b>  21 A. Well, you'll note in the second  22 paragraph Mr. Sutton has instructed me to  23 get these documents into the hands of Mark  24 Evens pronto.  25 <b>Q. Okay.</b></p>
<p style="text-align: right;">Page 315</p> <p>1 <b>P. Sutton</b>  2 MR. LODEN: No, he's at the page  3 I'm talking about.  4 MR. CHU: Oh, I'm sorry.  5 A. Bear with me.  6 <b>Q. You're looking at the right --</b>  7 A. No, excuse me -- okay.  8 Now, I'm looking at the page  9 ending in 98948 Bates number of Exhibit 25.  10 <b>Q. That's correct.</b>  11 A. Yes.  12 <b>Q. Mr. Jergensen references Quickie,</b>  13 <b>LLC versus Medtronic, Inc.</b>  14 <b>Do you see that?</b>  15 A. I do.  16 <b>Q. And then he states "our reference</b>  17 <b>number."</b>  18 <b>Do you have an understanding as</b>  19 <b>to who "our" refers to there, is that</b>  20 <b>Greenberg Traurig?</b>  21 A. That would be Greenberg Traurig's  22 reference number.  23 <b>Q. And then the number there</b>  24 <b>51822.010400, do you see that?</b>  25 A. I see that number.</p>	<p style="text-align: right;">Page 317</p> <p>1 <b>P. Sutton</b>  2 A. So Paul Jergensen is reflecting  3 my request that he take care of that ASAP.  4 <b>Q. Okay.</b>  5 <b>And actually, this letter from</b>  6 <b>Mr. Jergensen dated October 16, 2002, if</b>  7 <b>you look at the last sentence of the first</b>  8 <b>paragraph, he says a copy of my cover</b>  9 <b>letter accompanying the files is faxed</b>  10 <b>herewith.</b>  11 A. I'm sorry, where are you?  12 <b>Q. The last sentence of the first</b>  13 <b>paragraph. A copy of my cover letter</b>  14 <b>accompanying the files is faxed herewith.</b>  15 <b>Do you see that?</b>  16 A. Yes, I see that sentence.  17 <b>Q. And then if you turn to the next</b>  18 <b>page, you'll see a two-page letter written</b>  19 <b>by Mr. Jergensen.</b>  20 A. Yes, with item number 5  21 reflecting the '160 Patent and its file  22 history and prior art as being forwarded on  23 October 16th.  24 MR. LODEN: Objection.  25 Nonresponsive.</p>

81 (Pages 318 to 321)

<p style="text-align: right;">Page 318</p> <p>1 P. Sutton</p> <p>2 BY MR. LODEN:</p> <p>3 <b>Q. So the two-page, the last two</b></p> <p>4 <b>pages of Exhibit 25, the letter from</b></p> <p>5 <b>Mr. Jergensen, the two-page letter dated</b></p> <p>6 <b>October 16, 2002, it also references</b></p> <p>7 <b>Quickie, LLC versus Medtronic.</b></p> <p>8 <b>Do you see that?</b></p> <p>9 A. It references not only Quickie,</p> <p>10 LLC versus Medtronic, but also it makes</p> <p>11 express reference to U.S. Patent No.</p> <p>12 6,066,160 file history and prior art next</p> <p>13 to number 5 on the first page of the letter</p> <p>14 to Shari Markovitz-Savit dated October 16,</p> <p>15 2002.</p> <p>16 <b>Q. And the reference for the client</b></p> <p>17 <b>matter number on this document is</b></p> <p>18 <b>51822.010400, correct?</b></p> <p>19 A. It appears on the top, in the</p> <p>20 reference clause of the first page of Paul</p> <p>21 Jergensen's letter to Markovitz-Savit.</p> <p>22 <b>Q. Where in the 137 items listed</b></p> <p>23 <b>here on this letter would there be</b></p> <p>24 <b>reference to the patent record sheet for</b></p> <p>25 <b>the '160 Patent? Is it included in that</b></p>	<p style="text-align: right;">Page 320</p> <p>1 P. Sutton</p> <p>2 Jergensen did this transfer.</p> <p>3 <b>Q. Who did pack that box? Was it</b></p> <p>4 <b>Mr. Jergensen?</b></p> <p>5 A. Either Mr. Jergensen or somebody</p> <p>6 at his direction, but likely Mr. Jergensen.</p> <p>7 <b>Q. And is Mr. Jergensen still</b></p> <p>8 <b>employed at Greenberg Traurig?</b></p> <p>9 A. I don't know the answer to that.</p> <p>10 MR. CHU: It's just past 6:00.</p> <p>11 We've been here for I guess eight and</p> <p>12 a half hours. Assuming that, you</p> <p>13 know, our lunch break and all the</p> <p>14 other breaks take collectively one and</p> <p>15 a half hours, we've been here for</p> <p>16 seven hours, so I'm just asking you</p> <p>17 guys to -- I'm just asking you to have</p> <p>18 this done as quickly as you can.</p> <p>19 MR. SCOTT: Wrap it up?</p> <p>20 MR. LODEN: That's what he's</p> <p>21 trying to say.</p> <p>22 MR. CHU: Yes.</p> <p>23 MR. SCOTT: We hear you loud and</p> <p>24 clear, Justin.</p> <p>25 MR. LODEN: If I can get the</p>
<p style="text-align: right;">Page 319</p> <p>1 P. Sutton</p> <p>2 <b>list?</b></p> <p>3 A. Item number 5 is broad enough to</p> <p>4 include that? You're saying that the</p> <p>5 patent record sheet in Exhibit 3 was</p> <p>6 included as part of item number 5.</p> <p>7 Certainly -- the description</p> <p>8 under item number 5 on Exhibit 25 I read as</p> <p>9 broad enough to contemplate inclusion of</p> <p>10 that patent record sheet of Exhibit 3.</p> <p>11 BY MR. LODEN:</p> <p>12 <b>Q. If I could get you to turn to</b></p> <p>13 <b>Exhibit 8?</b></p> <p>14 A. 8?</p> <p>15 <b>Q. 8.</b></p> <p>16 A. It's in front of me.</p> <p>17 <b>Q. The two-page document that's in</b></p> <p>18 <b>Exhibit 8 was this document, the two-page</b></p> <p>19 <b>document, was it transferred to Shari</b></p> <p>20 <b>Markovitz-Savit at Thelen Reid as part of</b></p> <p>21 <b>this letter that we're looking at in</b></p> <p>22 <b>Exhibit 25?</b></p> <p>23 A. Very possibly under item number</p> <p>24 5, but I personally did not pack a copy of</p> <p>25 Exhibit 8 in the box at the time that Paul</p>	<p style="text-align: right;">Page 321</p> <p>1 P. Sutton</p> <p>2 reporter to mark Exhibit 26.</p> <p>3 (Exhibit 26, March 11, 2003</p> <p>4 letter, marked for identification, as</p> <p>5 of this date.)</p> <p>6 A. Counselor, I noticed at the</p> <p>7 bottom of Exhibit 8 that there is a date</p> <p>8 at which Exhibit 8 was printed. It's a</p> <p>9 2007 date.</p> <p>10 So I don't believe Exhibit 8 as</p> <p>11 it appears here would in its entirety have</p> <p>12 been transferred back to 2002.</p> <p>13 <b>Q. But if we wanted to find out</b></p> <p>14 <b>whether any part of it was packed up in</b></p> <p>15 <b>those boxes and transferred, Paul Jergensen</b></p> <p>16 <b>or someone at his direction would be the</b></p> <p>17 <b>one to answer?</b></p> <p>18 A. Actually, Thelen would be the</p> <p>19 best party to ask because they would have</p> <p>20 received it and they would have a record of</p> <p>21 it.</p> <p>22 MR. SCOTT: They didn't.</p> <p>23 MR. LODEN: They didn't, so...</p> <p>24 THE WITNESS: Well, I'm not sure</p> <p>25 what their document retention policy</p>

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<p style="text-align: right;">Page 322</p> <p>1 P. Sutton</p> <p>2 is.</p> <p>3 BY MR. LODEN:</p> <p>4 <b>Q. Exhibit 26 is before you now?</b></p> <p>5 A. I have that.</p> <p>6 <b>Q. Which appears to be a March 11,</b></p> <p>7 <b>2003 letter from Todd Sharinn to</b></p> <p>8 <b>Dr. Colvin.</b></p> <p>9 <b>Do you see that?</b></p> <p>10 A. I do.</p> <p>11 <b>Q. Just one quick question. The</b></p> <p>12 <b>reference number up there on top</b></p> <p>13 <b>51822.010400.</b></p> <p>14 <b>Do you see that?</b></p> <p>15 A. I do see those numbers.</p> <p>16 <b>Q. And Mr. Sharinn enclosed a copy</b></p> <p>17 <b>of Mr. Jergensen's October 16, 2002</b></p> <p>18 <b>correspondence.</b></p> <p>19 <b>Do you see that?</b></p> <p>20 A. Yes, I do see that.</p> <p>21 <b>Q. Have you seen any other -- strike</b></p> <p>22 <b>that.</b></p> <p>23 MR. LODEN: If I can get the</p> <p>24 reporter to mark Exhibit 27, please.</p> <p>25 (Exhibit 27, May 15, 2003 letter,</p>	<p style="text-align: right;">Page 324</p> <p>1 P. Sutton</p> <p>2 <b>Q. I believe it's Exhibit 19?</b></p> <p>3 A. Yes, I see Exhibit 19 and I see</p> <p>4 those comparable numbers 51822.0109 --</p> <p>5 shorthand, I believe that there are two</p> <p>6 zeros that follow.</p> <p>7 <b>Q. So that matter number 0109, the</b></p> <p>8 <b>010900 is entitled re-examination of U.S.</b></p> <p>9 <b>Patent No. 6,066,160 by Medtronic, correct?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. So in this correspondence on page</b></p> <p>12 <b>27 --</b></p> <p>13 A. On Exhibit 27?</p> <p>14 <b>Q. Yes, I apologize, Exhibit 27,</b></p> <p>15 <b>Mr. Sharinn states, "We enclose for your</b></p> <p>16 <b>information and records a copy of a notice</b></p> <p>17 <b>regarding change of Power of Attorney filed</b></p> <p>18 <b>in connection with the above-referenced</b></p> <p>19 <b>re-examination application."</b></p> <p>20 <b>Do you see that?</b></p> <p>21 A. I see that first sentence, yes.</p> <p>22 <b>Q. So the notice of change of Power</b></p> <p>23 <b>of Attorney related to the re-examination</b></p> <p>24 <b>which was reflected in Greenberg's files as</b></p> <p>25 <b>client matter number 51822.010900?</b></p>
<p style="text-align: right;">Page 323</p> <p>1 P. Sutton</p> <p>2 marked for identification, as of this</p> <p>3 date.)</p> <p>4 BY MR. LODEN:</p> <p>5 <b>Q. Do you have Exhibit 27 in front</b></p> <p>6 <b>of you?</b></p> <p>7 A. I do.</p> <p>8 <b>Q. This appears to be a May 15, 2003</b></p> <p>9 <b>letter from Todd Sharinn to Quickie, LLC,</b></p> <p>10 <b>care of Rick Steiner Siegel &amp; Fell.</b></p> <p>11 <b>Do you see that?</b></p> <p>12 A. I see Exhibit 27 consisting of</p> <p>13 two pages, yes.</p> <p>14 <b>Q. Well, that wasn't my question.</b></p> <p>15 <b>Could you answer my question?</b></p> <p>16 A. I'm sorry, your question?</p> <p>17 <b>Q. My question is: Is Exhibit 27</b></p> <p>18 <b>correspondence from Todd Sharinn to</b></p> <p>19 <b>Quickie, LLC care of Rick Steiner Siegel &amp;</b></p> <p>20 <b>Fell dated May 15, 2003?</b></p> <p>21 A. It appears to be that, yes.</p> <p>22 <b>Q. And in that correspondence</b></p> <p>23 <b>Mr. Sharinn references 51822.010900, do you</b></p> <p>24 <b>see that?</b></p> <p>25 A. I see those numbers.</p>	<p style="text-align: right;">Page 325</p> <p>1 P. Sutton</p> <p>2 MR. CHU: Objection.</p> <p>3 A. Actually, if you take a look at</p> <p>4 the second page of Exhibit 27, it recites</p> <p>5 the Power of Attorney to you in this</p> <p>6 application has been revoked by the</p> <p>7 assignee who has intervened as provided by</p> <p>8 37 CFR 3.71, future correspondence will be</p> <p>9 mailed to the new address of record.</p> <p>10 So it references the application.</p> <p>11 <b>Q. So was Mr. Sharinn just wrong</b></p> <p>12 <b>when he referenced matter number 010900?</b></p> <p>13 A. Not necessarily, no, because the</p> <p>14 re-examination actually is part of the file</p> <p>15 history of the '160 Patent.</p> <p>16 We separated the re-examination</p> <p>17 documents into a separate physical file,</p> <p>18 but that's all part of the same file</p> <p>19 history, so that I don't believe it's</p> <p>20 incorrect.</p> <p>21 <b>Q. Just maybe not complete, is that</b></p> <p>22 <b>what you're saying?</b></p> <p>23 A. There were two matter numbers</p> <p>24 that dealt with different aspects of the</p> <p>25 file history of the '160 Patent, one of</p>

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<p style="text-align: right;">Page 326</p> <p>1 P. Sutton</p> <p>2 those being the re-examination papers that</p> <p>3 for orderliness would have been separated</p> <p>4 for ease of reference.</p> <p>5 <b>Q. And the other one was the patent</b></p> <p>6 <b>prosecution matter?</b></p> <p>7 A. Not patent prosecution, because</p> <p>8 at the time that the '160 Patent was</p> <p>9 granted, Greenberg Traurig did not</p> <p>10 represent Quickie. That prosecution had</p> <p>11 already been completed.</p> <p>12 <b>Q. So what other matter number are</b></p> <p>13 <b>you referring to then?</b></p> <p>14 A. The matter of the patent itself</p> <p>15 having already been granted at the time</p> <p>16 that GT was retained.</p> <p>17 <b>Q. Which matter number is that, is</b></p> <p>18 <b>it 0104, Quickie versus Medtronics, 0107 --</b></p> <p>19 A. See, I think your problem is that</p> <p>20 you're referring to the table that your</p> <p>21 firm has created instead of to the</p> <p>22 documents.</p> <p>23 <b>Q. Well, we can refer to the</b></p> <p>24 <b>documents.</b></p> <p>25 <b>If you look at Exhibit 17, 0107</b></p>	<p style="text-align: right;">Page 328</p> <p>1 P. Sutton</p> <p>2 Exhibit 17.</p> <p>3 <b>Q. Are you aware of any</b></p> <p>4 <b>correspondence from yourself or Todd</b></p> <p>5 <b>Sharinn or a paralegal at Greenberg Traurig</b></p> <p>6 <b>saying that they're transferring files</b></p> <p>7 <b>related to matter number, client matter</b></p> <p>8 <b>number 51812.010700 to Thelen? Do you</b></p> <p>9 <b>recall seeing any such document?</b></p> <p>10 A. Can you rephrase that question,</p> <p>11 please?</p> <p>12 <b>Q. My question is we've looked at</b></p> <p>13 <b>correspondence that references 010400 and</b></p> <p>14 <b>now we've looked at correspondence that</b></p> <p>15 <b>references 010900.</b></p> <p>16 <b>My question is: Have you ever</b></p> <p>17 <b>seen any correspondence that references</b></p> <p>18 <b>010700?</b></p> <p>19 A. Yes. I refer you to my prior</p> <p>20 testimony with respect to item number 5 on</p> <p>21 Exhibit 26 indicating that the documents</p> <p>22 involving the '160 Patent which had a</p> <p>23 matter number associated with it of '01</p> <p>24 0700 were forwarded on October 16, 2002 to</p> <p>25 Thelen by Paul Jergensen.</p>
<p style="text-align: right;">Page 327</p> <p>1 P. Sutton</p> <p>2 <b>is the patent.</b></p> <p>3 A. Exhibit 17?</p> <p>4 <b>Q. Yes. Exhibit 101, the patent</b></p> <p>5 <b>prosecution for the '160 Patent?</b></p> <p>6 A. The mattered number 010700</p> <p>7 relates to the issued patent, the '160</p> <p>8 Patent on line 6 of Exhibit 17.</p> <p>9 <b>Q. So then you're saying that to be</b></p> <p>10 <b>complete, Todd Sharinn should have also</b></p> <p>11 <b>referenced 010700?</b></p> <p>12 A. I didn't say that.</p> <p>13 <b>Q. Well, he only says that he's</b></p> <p>14 <b>providing a notice of change regarding</b></p> <p>15 <b>Power of Attorney filed in connection with</b></p> <p>16 <b>010900?</b></p> <p>17 A. He said what he said. I'm</p> <p>18 calling your attention to the fact that the</p> <p>19 re-examination proceedings, documents</p> <p>20 relating to which were physically kept</p> <p>21 separate under matter number 010900 related</p> <p>22 to the file history of the '160 Patent</p> <p>23 which carried a Greenberg Traurig matter</p> <p>24 number 010700. That's what I testified to,</p> <p>25 and I reference you in that regard to</p>	<p style="text-align: right;">Page 329</p> <p>1 P. Sutton</p> <p>2 <b>Q. I'm sorry, it's late in the day,</b></p> <p>3 <b>but bear with me.</b></p> <p>4 <b>Where on Exhibit 26 do the</b></p> <p>5 <b>numbers 010700 appear, because I'm not</b></p> <p>6 <b>seeing it?</b></p> <p>7 A. You have to then go to find the</p> <p>8 0107, that is on Exhibit 17, which is the</p> <p>9 Greenberg Traurig client matter intake</p> <p>10 memorandum associated with item number 5 on</p> <p>11 Exhibit 26.</p> <p>12 <b>Q. So the number, the actual number</b></p> <p>13 <b>010700 don't appear on Exhibit 26, but</b></p> <p>14 <b>you're saying that they're incorporated</b></p> <p>15 <b>within item number 5, that's what you're</b></p> <p>16 <b>saying?</b></p> <p>17 A. I said what I said.</p> <p>18 <b>Q. Okay, fine.</b></p> <p>19 A. You have a tendency to attempt to</p> <p>20 summarize my testimony and it's rarely</p> <p>21 accurate.</p> <p>22 <b>Q. I'm just trying to make sure I</b></p> <p>23 <b>understand that you're not saying that the</b></p> <p>24 <b>number 010700 appear on Exhibit 26?</b></p> <p>25 A. Listen --</p>



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<p style="text-align: right;">Page 330</p> <p>1 P. Sutton</p> <p>2 MR. CHU: Why don't we take a</p> <p>3 break.</p> <p>4 MR. LODEN: There's a question</p> <p>5 pending. I'd like to get an answer to</p> <p>6 the question pending.</p> <p>7 <b>Q. You're not saying, are you, that</b></p> <p>8 <b>number 010700 appears on Exhibit 26, are</b></p> <p>9 <b>you?</b></p> <p>10 A. I have not testified to that</p> <p>11 effect, no.</p> <p>12 <b>Q. Okay.</b></p> <p>13 <b>Well, point to me where those</b></p> <p>14 <b>numbers appear on Exhibit 26.</b></p> <p>15 A. I don't see those numbers on 26</p> <p>16 as I look at it quickly.</p> <p>17 <b>Q. Okay.</b></p> <p>18 A. I see item number 5 which</p> <p>19 corresponds to that number on the second</p> <p>20 page of Exhibit 26.</p> <p>21 MR. SCOTT: Objection. Move to</p> <p>22 strike as nonresponsive, everything</p> <p>23 after "I see."</p> <p>24 MR. LODEN: Do you want to take a</p> <p>25 break?</p>	<p style="text-align: right;">Page 332</p> <p>1 P. Sutton</p> <p>2 outside counsel with support from employees</p> <p>3 of Greenberg Traurig.</p> <p>4 <b>Q. You said office of general</b></p> <p>5 <b>counsel.</b></p> <p>6 <b>That's Greenberg Traurig's</b></p> <p>7 <b>general counsel?</b></p> <p>8 A. That's correct.</p> <p>9 MR. LODEN: I'll ask the reporter</p> <p>10 to mark Exhibit 28.</p> <p>11 (Exhibit 28, Document, Bates</p> <p>12 stamped Bates numbers GT 15831 to</p> <p>13 15841, marked for identification, as</p> <p>14 of this date.)</p> <p>15 BY MR. LODEN:</p> <p>16 <b>Q. Mr. Sutton, the reporter has just</b></p> <p>17 <b>handed you what's been marked as Exhibit</b></p> <p>18 <b>28.</b></p> <p>19 <b>Before we get to it, I just want</b></p> <p>20 <b>to make sure you and I agree that the, if</b></p> <p>21 <b>you look at Exhibit 27?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. Exhibit 27, the second page,</b></p> <p>24 <b>there's a date on there, date mailed, April</b></p> <p>25 <b>2, 2003.</b></p>
<p style="text-align: right;">Page 331</p> <p>1 P. Sutton</p> <p>2 (Recess taken from 6:17 p.m. to</p> <p>3 6:27 p.m.)</p> <p>4 BY MR. LODEN:</p> <p>5 <b>Q. Before the break, Mr. Sutton,</b></p> <p>6 <b>we've looked at several pieces of</b></p> <p>7 <b>correspondence where there's reference of</b></p> <p>8 <b>files being transferred to Thelen.</b></p> <p>9 <b>Do you know if Greenberg kept</b></p> <p>10 <b>copies of any of those files that were</b></p> <p>11 <b>transferred to Thelen?</b></p> <p>12 A. As I sit here today, I don't</p> <p>13 know.</p> <p>14 <b>Q. Do you know if those files were</b></p> <p>15 <b>included in the documents reviewed in</b></p> <p>16 <b>response to our request for production, if</b></p> <p>17 <b>there were such copies made?</b></p> <p>18 A. I was not charged with that</p> <p>19 responsibility, so I don't know the answer</p> <p>20 to that question.</p> <p>21 <b>Q. Who was charged with the</b></p> <p>22 <b>responsibility of reviewing Greenberg's</b></p> <p>23 <b>files and gathering them for response to</b></p> <p>24 <b>our request for production?</b></p> <p>25 A. Office of general counsel,</p>	<p style="text-align: right;">Page 333</p> <p>1 P. Sutton</p> <p>2 A. I see that date.</p> <p>3 <b>Q. So is that the date that your</b></p> <p>4 <b>testimony is that Greenberg's Power of</b></p> <p>5 <b>Attorney with respect to the '160 Patent</b></p> <p>6 <b>was revoked and Thelen was given Power of</b></p> <p>7 <b>Attorney?</b></p> <p>8 A. That's the same date I was</p> <p>9 referring to previously in my testimony.</p> <p>10 <b>Q. With respect to that transfer of</b></p> <p>11 <b>Power of Attorney? It's not a trick</b></p> <p>12 <b>question. I'm just trying to make sure</b></p> <p>13 <b>we're talking about the same date when the</b></p> <p>14 <b>Power of Attorney was transferred.</b></p> <p>15 A. I believe it's the same date that</p> <p>16 our Power of Attorney was revoked and the,</p> <p>17 and our responsibility ended.</p> <p>18 <b>Q. Okay.</b></p> <p>19 A. With respect to the '160 Patent.</p> <p>20 <b>Q. If you look at Exhibit 28, which</b></p> <p>21 <b>is a multipage document bearing Bates</b></p> <p>22 <b>numbers GT 15831 through 15841, the top of</b></p> <p>23 <b>page 1, it appears that Todd Sharinn is</b></p> <p>24 <b>e-mailing you, copies of the Quickie</b></p> <p>25 <b>re-examine papers in an e-mail dated April</b></p>



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<p style="text-align: right;">Page 334</p> <p>1 <b>P. Sutton</b>  2 <b>6, 2004.</b>  3 <b>Do you see that?</b>  4 A. I see those dates and I see the  5 reference to me by Todd, yes.  6 <b>Q. Do you know why Todd was sending</b>  7 <b>you the Quickie re-examine papers on April</b>  8 <b>6, 2004?</b>  9 A. Probably more than one reason.  10 He asks in the second sentence do you have  11 time to discuss Todd. He was sending them  12 to me so that I could review them prior to  13 our discussing them.  14 <b>Q. Well, I thought you said that</b>  15 <b>Greenberg's Power of Attorney was revoked</b>  16 <b>on April 2, 2003, so my question is: Why</b>  17 <b>are you and Todd discussing the re-examine</b>  18 <b>a year later, roughly a year later?</b>  19 A. Well, we take an interest in  20 matters that we've helped clients for and  21 we monitor cases that are handled by other  22 firms, and we inform our own opinions.  23 There are times that we learn  24 from the practices of other firms, not the  25 case in all instances, and I think that</p>	<p style="text-align: right;">Page 336</p> <p>1 P. Sutton  2 longer after April 2, 2003 had any  3 responsibility for the '160 Patent or  4 matters affecting the '160 Patent.  5 <b>Q. Did someone ask you to monitor</b>  6 <b>the re-examination of the '160 Patent even</b>  7 <b>after the Power of Attorney was revoked?</b>  8 A. I am not aware of any such  9 request, as I sit here today.  10 <b>Q. If you turn to page 2, looks like</b>  11 <b>a fax cover page from someone at New York</b>  12 <b>University School of Medicine to Todd</b>  13 <b>Sharinn.</b>  14 <b>Do you see that?</b>  15 A. Yes.  16 <b>Q. Do you know why these papers were</b>  17 <b>being faxed from New York University School</b>  18 <b>of Medicine to Todd Sharinn?</b>  19 A. If you take a look at the fax  20 cover sheet, which is the second page, it's  21 the fax cover sheet of Stephen Colvin,  22 Dr. Colvin of Quickie.  23 <b>Q. Uh-huh.</b>  24 A. As I look at these papers and the  25 fact that he's forwarding it to our firm --</p>
<p style="text-align: right;">Page 335</p> <p>1 P. Sutton  2 Todd's having had a relationship with Steve  3 Colvin prompted him to want to discuss this  4 with me.  5 <b>Q. Well, did you actually discuss it</b>  6 <b>with Todd?</b>  7 A. You're talking about four years  8 ago, more than four years ago. It's likely  9 I did.  10 <b>Q. What did you all talk about?</b>  11 A. The papers that he forwarded with  12 his April 6, 2004 e-mail to me.  13 <b>Q. Well, in what aspect did you</b>  14 <b>discuss those papers?</b>  15 A. It would have included a  16 discussion of the substance of those  17 papers.  18 <b>Q. Okay.</b>  19 <b>But at that time, Greenberg did</b>  20 <b>not have Power of Attorney concerning</b>  21 <b>160359 at the time that this discussion</b>  22 <b>occurred?</b>  23 A. Todd's April 6, 2004 e-mail to me  24 requesting time to discuss is after the  25 April 2, 2003 revocation, so that we no</p>	<p style="text-align: right;">Page 337</p> <p>1 P. Sutton  2 I don't know what's in his mind at that  3 time.  4 <b>Q. Okay.</b>  5 A. Do you notice to the fax cover  6 sheets to Thelen Reid &amp; Priest to the  7 attention of Hal Bolner.  8 <b>Q. You're referring to page 3 of the</b>  9 <b>document?</b>  10 A. That's correct.  11 <b>Q. Right, that's the document that</b>  12 <b>Dr. Colvin had forwarded to Todd Sharinn,</b>  13 <b>right -- I mean, that's the attachment to</b>  14 <b>the fax cover page on page 2 of the</b>  15 <b>exhibit?</b>  16 A. I believe that that sheet ending  17 in 5833 is from the Patent and Trademark  18 Office Technology Center in Alexandria,  19 Virginia.  20 <b>Q. Then Dr. Colvin forwarded that</b>  21 <b>fax from the PTO office to Todd Sharinn,</b>  22 <b>and my question is: Again, I think you've</b>  23 <b>already said you don't know why he did it,</b>  24 <b>but do you have any reason to know why</b>  25 <b>Dr. Colvin wanted this information</b></p>

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<p style="text-align: right;">Page 338</p> <p>1 <b>P. Sutton</b>  2 <b>forwarded to Todd Sharinn?</b>  3 A. I would imagine he would be  4 concerned about the events taking place  5 after his having revoked our power.  6 <b>Q. Do you know if you billed your</b>  7 <b>time to Quickle for this discussion with</b>  8 <b>Todd concerning the re-examine papers?</b>  9 A. I'm not aware of any billing of  10 time with regard to my looking at  11 re-examination papers, but I would be able  12 to confirm whether that's the case or not  13 by looking at our invoices. I do not  14 recall any time being billed.  15 <b>Q. Would your answer be the same</b>  16 <b>with respect to Mr. Sharinn?</b>  17 A. You have to ask Mr. Sharinn that.  18 <b>Q. Well, if you wanted to -- you</b>  19 <b>personally don't know if Mr. Sharinn billed</b>  20 <b>time or not for that conversation?</b>  21 A. I'd have to refer to --  22 MR. CHU: Objection.  23 A. -- I'd have to refer to invoices  24 to answer that question.  25 MR. LODEN: If we can mark</p>	<p style="text-align: right;">Page 340</p> <p>1 P. Sutton  2 he called.  3 <b>Q. Okay.</b>  4 <b>In that voicemail, he referenced</b>  5 <b>a conversation with Todd Sharinn and that</b>  6 <b>Todd thought it maybe was a good idea that</b>  7 <b>Allan spoke with you.</b>  8 <b>Do you see that?</b>  9 A. I see reference to that type of  10 thing in the body of this transcription of  11 the voicemail.  12 <b>Q. Did you actually talk to Mr. Fell</b>  13 <b>after this voicemail?</b>  14 A. I have no recollection of talking  15 to Mr. Fell after receiving this voicemail.  16 <b>Q. He asks you to give him a call</b>  17 <b>when you have a chance, when you get a</b>  18 <b>chance.</b>  19 <b>Do you recall whether you made</b>  20 <b>that phone call?</b>  21 A. I just answered that question.  22 <b>Q. I asked if you talked to him. I</b>  23 <b>didn't ask if you called him. Maybe you</b>  24 <b>didn't get it. But did you try to call him</b>  25 <b>back?</b></p>
<p style="text-align: right;">Page 339</p> <p>1 P. Sutton  2 Exhibit 29.  3 (Exhibit 29, Document, marked for  4 identification, as of this date.)  5 BY MR. LODEN:  6 <b>Q. Do you have Exhibit 29 in front</b>  7 <b>of you?</b>  8 A. Yes.  9 <b>Q. Who is Marilyn Dawkins?</b>  10 A. She's the assistant, whose name I  11 gave you in my earlier testimony today.  12 <b>Q. Right.</b>  13 A. She's my assistant and another  14 word for that would be secretary.  15 <b>Q. Got it, okay.</b>  16 <b>There is a portion up at the top</b>  17 <b>that's redacted, but the portion that</b>  18 <b>remains looks to be a transcription of a</b>  19 <b>voicemail that Alan Fell left for you at</b>  20 <b>12:20 p.m.</b>  21 <b>Do you see that? Is that what</b>  22 <b>that is?</b>  23 A. This appears to be a  24 transcription of a voicemail that Alan Fell  25 left for me at 12:20 p.m. on the date that</p>	<p style="text-align: right;">Page 341</p> <p>1 <b>P. Sutton</b>  2 A. I have no recollection as to  3 that.  4 <b>Q. Do you know why Todd thought that</b>  5 <b>it would be a good idea for Mr. Fell to</b>  6 <b>speak with you?</b>  7 A. You're asking me about the  8 operation of the mind of Todd Sharinn and I  9 really, I'm not in a position to give you  10 testimony that's truthful and honest --  11 <b>Q. You don't want to speculate as to</b>  12 <b>what he was thinking?</b>  13 MR. CHU: Objection to that.  14 Let's move forward.  15 MR. LODEN: I'm just asking.  16 BY MR. LODEN:  17 <b>Q. Do you want to speculate as to</b>  18 <b>what Mr. Sharinn was thinking?</b>  19 MR. CHU: No, he does not.  20 MR. SCOTT: Nor do we.  21 MR. LODEN: That's fine.  22 BY MR. LODEN:  23 <b>Q. Todd Sharinn eventually left</b>  24 <b>Greenberg Traurig and moved to Baker</b>  25 <b>McKenzie, correct?</b></p>

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<p style="text-align: right;">Page 342</p> <p>1           <b>P. Sutton</b></p> <p>2       A. I believe that that's so.</p> <p>3       <b>Q. For the Quickle matters that were</b></p> <p>4 <b>open that did not relate to the '160</b></p> <p>5 <b>Patent, were those matters transferred to</b></p> <p>6 <b>Baker McKenzie when Todd moved to Baker</b></p> <p>7 <b>McKenzie?</b></p> <p>8       A. As I sit here today, I don't</p> <p>9 know.</p> <p>10      <b>Q. When did you last speak with</b></p> <p>11 <b>Todd?</b></p> <p>12      A. Yesterday.</p> <p>13      <b>Q. Was that in person or over the</b></p> <p>14 <b>phone?</b></p> <p>15      A. That was in person at the offices</p> <p>16 of outside counsel.</p> <p>17      <b>Q. Do you know if there was any file</b></p> <p>18 <b>transfer correspondence between Greenberg</b></p> <p>19 <b>Taurig and Baker McKenzie concerning the</b></p> <p>20 <b>transfer of files to Baker McKenzie?</b></p> <p>21      A. I have no personal information or</p> <p>22 knowledge that would enable me to answer</p> <p>23 that question.</p> <p>24      <b>Q. Who would?</b></p> <p>25      A. I don't know.</p>	<p style="text-align: right;">Page 344</p> <p>1           P. Sutton</p> <p>2 department at our firm.</p> <p>3      <b>Q. Okay.</b></p> <p>4           <b>Why did Todd leave Greenberg, if</b></p> <p>5 <b>you know?</b></p> <p>6      A. He left for what I believe was a</p> <p>7 better opportunity, and I think that there</p> <p>8 was a mutual feeling that he did not quite</p> <p>9 fit in at Greenberg and felt that, it would</p> <p>10 be a better fit for him at Baker.</p> <p>11      <b>Q. How did he not fit in at</b></p> <p>12 <b>Greenberg, in what respect?</b></p> <p>13      A. I think just general personality.</p> <p>14      <b>Q. Well, what aspect of his</b></p> <p>15 <b>personality made him a poor fit for</b></p> <p>16 <b>Greenberg?</b></p> <p>17      A. I don't know how to -- I mean,</p> <p>18 I'm not in a position to give you a concise</p> <p>19 statement. His style was different than</p> <p>20 the style of others with whom he worked and</p> <p>21 he had the feeling and we had the feeling</p> <p>22 that he did not fit in.</p> <p>23           MR. SCOTT: Are you going to ask</p> <p>24 anymore questions about that?</p> <p>25           MR. LODEN: One or two.</p>
<p style="text-align: right;">Page 343</p> <p>1           P. Sutton</p> <p>2      <b>Q. If you wanted to see whether</b></p> <p>3 <b>files were transferred from Greenberg</b></p> <p>4 <b>Taurig to Baker McKenzie, where would you</b></p> <p>5 <b>look?</b></p> <p>6      A. I'm not sure as I sit here right</p> <p>7 now.</p> <p>8           MR. CHU: Other than in the files</p> <p>9 themselves.</p> <p>10          MR. LODEN: Well, I mean, that</p> <p>11 seems reasonable, but he's not willing</p> <p>12 to say that.</p> <p>13          MR. CHU: It's late in the day.</p> <p>14          MR. LODEN: Well, I'm just trying</p> <p>15 to understand.</p> <p>16 BY MR. LODEN:</p> <p>17      <b>Q. Do you have any knowledge at all</b></p> <p>18 <b>of the transfer of Quickie's files from</b></p> <p>19 <b>Greenberg Taurig to Baker McKenzie when</b></p> <p>20 <b>Todd left Greenberg Taurig and moved to</b></p> <p>21 <b>Baker McKenzie?</b></p> <p>22      A. I personally have no knowledge of</p> <p>23 that, and to the extent that I wanted to</p> <p>24 find out if that occurred, I would have to</p> <p>25 seek information from our records</p>	<p style="text-align: right;">Page 345</p> <p>1           P. Sutton</p> <p>2           MR. SCOTT: It's late in the day</p> <p>3 and I just don't want you to say</p> <p>4 something that you don't need to say</p> <p>5 in terms of a personal insult on Todd.</p> <p>6           THE WITNESS: I don't want to do</p> <p>7 that.</p> <p>8           MR. SCOTT: -- a high regard for</p> <p>9 him, and it doesn't serve anybody's</p> <p>10 interest to say something that's</p> <p>11 extraneous that can be taken wrongly</p> <p>12 by somebody.</p> <p>13           THE WITNESS: That's why I'm</p> <p>14 trying to be careful in giving you a</p> <p>15 truthful answer, but I have nothing</p> <p>16 negative to say about Todd Sharinn.</p> <p>17 BY MR. LODEN:</p> <p>18      <b>Q. My only other question was: Was</b></p> <p>19 <b>Todd ever nominated for partner at</b></p> <p>20 <b>Greenberg Taurig?</b></p> <p>21      A. Not that I'm aware of --</p> <p>22 actually, I misspoke. We don't have</p> <p>23 partners at Greenberg Taurig, we have</p> <p>24 shareholders.</p> <p>25      <b>Q. Shareholders.</b></p>

88 (Pages 346 to 349)

<p style="text-align: right;">Page 346</p> <p>1 <b>P. Sutton</b></p> <p>2 A. And I don't believe we have a</p> <p>3 nomination process as such, but Todd never</p> <p>4 advanced to shareholder status.</p> <p>5 MR. LODEN: Two more.</p> <p>6 Exhibit 30.</p> <p>7 (Exhibit 30, Document Bates</p> <p>8 stamped 15842 to 15844, marked for</p> <p>9 identification, as of this date.)</p> <p>10 BY MR. LODEN:</p> <p>11 <b>Q. You've been handed a document</b></p> <p>12 <b>which, a three-page document which has been</b></p> <p>13 <b>marked as Exhibit 30, which was produced by</b></p> <p>14 <b>Greenberg in this litigation with Bates</b></p> <p>15 <b>numbers 15842 through 15844.</b></p> <p>16 <b>Have you seen this document</b></p> <p>17 <b>before?</b></p> <p>18 A. I believe I have.</p> <p>19 <b>Q. When did you last see this</b></p> <p>20 <b>document?</b></p> <p>21 A. I believe on or about the time of</p> <p>22 the e-mail of September 28, 2006.</p> <p>23 <b>Q. Okay.</b></p> <p>24 <b>Have you ever spoken with Tim</b></p> <p>25 <b>Maier?</b></p>	<p style="text-align: right;">Page 348</p> <p>1 <b>P. Sutton</b></p> <p>2 <b>of Mr. Maier's correspondence, but in it he</b></p> <p>3 <b>requests copies of any engagement</b></p> <p>4 <b>agreements with Quickle, any transfer</b></p> <p>5 <b>letters, any docketing records, et cetera.</b></p> <p>6 <b>So my question is: Did you</b></p> <p>7 <b>search Greenberg's files for those types of</b></p> <p>8 <b>documents in response to Mr. Maier's</b></p> <p>9 <b>request?</b></p> <p>10 A. I do not recall, as I sit here</p> <p>11 today, any information that would permit me</p> <p>12 to answer your query.</p> <p>13 <b>Q. You just don't remember if you</b></p> <p>14 <b>searched or not?</b></p> <p>15 A. I don't recall any, I don't</p> <p>16 recall anything that would help me respond</p> <p>17 to your question.</p> <p>18 <b>Q. What did you do with Mr. Maier's</b></p> <p>19 <b>correspondence after Mr. Berman forwarded</b></p> <p>20 <b>it to you?</b></p> <p>21 A. I do not recall.</p> <p>22 <b>Q. As you sit here today, do you</b></p> <p>23 <b>know if Greenberg Taurig produced any</b></p> <p>24 <b>documents at all to Mr. Maier in response</b></p> <p>25 <b>to his request?</b></p>
<p style="text-align: right;">Page 347</p> <p>1 <b>P. Sutton</b></p> <p>2 A. Tim?</p> <p>3 <b>Q. I'm sorry, look at the last page</b></p> <p>4 <b>of the exhibit, do you see the signature</b></p> <p>5 <b>block there for Timothy J. Maier,</b></p> <p>6 <b>M-A-I-E-R?</b></p> <p>7 A. I don't recall any conversations</p> <p>8 between myself and Timothy Maier.</p> <p>9 <b>Q. Okay.</b></p> <p>10 <b>So it looks like Mr. Maier sent</b></p> <p>11 <b>pages 2 and 3 of Exhibit 30, somehow he</b></p> <p>12 <b>sent them to Charles Berman at Greenberg</b></p> <p>13 <b>Taurig.</b></p> <p>14 <b>Do you know, who is Mr. Berman?</b></p> <p>15 A. Charles Berman is a patent</p> <p>16 attorney who works in our Los Angeles</p> <p>17 office.</p> <p>18 <b>Q. Okay.</b></p> <p>19 <b>And then the first page, it looks</b></p> <p>20 <b>like Mr. Berman or actually the secretary</b></p> <p>21 <b>to Mr. Berman was forwarding Mr. Maier's</b></p> <p>22 <b>correspondence to you, right?</b></p> <p>23 A. That appears to be the case.</p> <p>24 <b>Q. We don't need to spend the time</b></p> <p>25 <b>unless you want to actually read the text</b></p>	<p style="text-align: right;">Page 349</p> <p>1 <b>P. Sutton</b></p> <p>2 A. As sit here, I have, I do not</p> <p>3 have a recollection or knowledge for me to</p> <p>4 answer that question. I just don't know.</p> <p>5 <b>Q. And just so the record is clear,</b></p> <p>6 <b>you weren't involved -- if there was an</b></p> <p>7 <b>effort to find documents, you weren't</b></p> <p>8 <b>involved in that effort, correct?</b></p> <p>9 A. I do not recall if --</p> <p>10 <b>Q. You don't recall what?</b></p> <p>11 A. I don't recall anything that</p> <p>12 permits me to answer your question. I</p> <p>13 don't recall any events or activities on my</p> <p>14 part in connection with this, as I sit here</p> <p>15 today.</p> <p>16 <b>Q. Do you know if Greenberg</b></p> <p>17 <b>maintains an index of the files it keeps on</b></p> <p>18 <b>behalf of clients?</b></p> <p>19 A. What do you mean by index?</p> <p>20 <b>Q. For example, and let's talk</b></p> <p>21 <b>specifically with respect to the Quickie</b></p> <p>22 <b>client matter numbers, do you know if</b></p> <p>23 <b>there's a document which lists the files</b></p> <p>24 <b>that are maintained or that were maintained</b></p> <p>25 <b>for the Quickie engagements?</b></p>

89 (Pages 350 to 353)

Page 350

1

P. Sutton

2

A. I'm not aware of any as I sit

3

here today.

4

Q. Okay.

5

Does Greenberg have a document

6

retention policy?

7

A. I'm sure it does, but I am not

8

familiar with the details of that.

9

Q. As you sit here today, do you

10

know if Greenberg has ever destroyed any

11

documents created during the Quickie

12

engagements, any engagement for Quickie,

13

LLC?

14

A. I'm not aware of any.

15

MR. LODEN: If I can have two or

16

three minutes to go over my notes and

17

chat with my co-counsel real quick, I

18

think that we can wrap this up from

19

our side.

20

MR. CHU: Absolutely, absolutely.

21

MR. LODEN: Off the record.

22

(Recess taken from 6:51 p.m. to

23

6:57 p.m.)

24

MR. LODEN: Mr. Sutton, I

25

appreciate your time today and your

Page 351

1

P. Sutton

2

effort to answer my questions. At

3

this time, we have no further

4

questions for you I pass the witness.

5

MR. CHU: Thank you.

6

THE WITNESS: Thank you.

7

(Time Noted: 7:00 p.m.)

8

9

10

PAUL SUTTON

11

12

Subscribed and sworn to before me

13

this \_\_\_\_ day of \_\_\_\_\_, 2008.

14

15

16

17

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Page 352

1

2

C E R T I F I C A T E

3

STATE OF NEW YORK )

4

: ss.

5

COUNTY OF NEW YORK )

6

7

I, Joan Urzia, a Notary Public

8

within and for the State of New York,

9

do hereby certify:

10

That PAUL SUTTON, the witness

11

whose deposition is hereinbefore set

12

forth, was duly sworn by me and that

13

such deposition is a true record of the

14

testimony given by the witness.

15

I further certify that I am not

16

related to any of the parties to this

17

action by blood or marriage, and that I

18

am in no way interested in the outcome

19

of this matter.

20

IN WITNESS WHEREOF, I have

21

hereunto set my hand this 11th day of

22

June, 2008.

23

24

25

Joan Urzia

Page 353

1

2

----- I N D E X -----

3

WITNESS EXAMINATION BY PAGE

4

PAUL SUTTON MR. LODEN 5

5

6

----- EXHIBITS -----

7

FOR ID.

8

1 30(b)(6) Notice of Greenberg 17

9

Traurig

10

2 Document 26

11

3 Patent Record Sheet Form 45

12

4 30(b)(6) Deposition Notice 54

13

5 Correspondence dated 4/11/02 123

14

6 Greenberg Traurig's Responses 162

15

to Plaintiff's Interrogatories

16

7 Document Bates stamped 380 174

17

to 384

18

8 DIAMS Patent Record Sheet 174

19

9 Client Matter Intake 219

20

Memorandum

21

10 Client Matter Intake 230

22

Memorandum dated 9/9/01

23

24

25

(Continued)

90 (Pages 354 to 355)

<p style="text-align: right;">Page 354</p> <p>1</p> <p>2 ----- EXHIBITS (Cont'd) -----</p> <p>3 FOR ID.</p> <p>4 11 Client Matter Intake 236</p> <p>5 Memorandum dated 9/9/01</p> <p>6 12 Client Matter Intake 239</p> <p>7 Memorandum dated 11/1/01</p> <p>8 13 Greenberg Traurig client 242</p> <p>9 matter intake memorandum</p> <p>10 dated 11/28/01</p> <p>11 14 Document referencing client 243</p> <p>12 matter number 51822.010400</p> <p>13 15 Greenberg Traurig client 243</p> <p>14 matter intake memorandum</p> <p>15 dated 1/29/02</p> <p>16 16 Greenberg Traurig client 243</p> <p>17 matter intake memorandum</p> <p>18 17 Greenberg Traurig client 243</p> <p>19 matter intake memorandum</p> <p>20 dated 8/5/02</p> <p>21 18 Document dated 11/1/02 243</p> <p>22 19 Greenberg Traurig client 243</p> <p>23 intake memorandum</p> <p>24</p> <p>25 (Continued)</p>	
<p style="text-align: right;">Page 355</p> <p>1</p> <p>2 ----- EXHIBITS (Cont'd) -----</p> <p>3 FOR ID.</p> <p>4 20 Summary of documents 244</p> <p>5 21 Pepe &amp; Hazard letter dated 272</p> <p>6 5/30/00</p> <p>7 22 Document 290</p> <p>8 23 Fax dated 11/11/02 302</p> <p>9 24 Letter 306</p> <p>10 25 Document 313</p> <p>11 26 March 11, 2003 letter 321</p> <p>12 27 May 15, 2003 letter 323</p> <p>13 28 Document, Bates stamped 332</p> <p>14 Bates numbers GT 15831 to</p> <p>15 15841</p> <p>16 29 Document 339</p> <p>17 30 Document Bates stamped 346</p> <p>18 15842 to 15844</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

Quickie LLC v. Greenberg Traurig LLP

**CORRECTIONS IN DEPOSITION  
OF  
PAUL SUTTON**

<u>Page/line</u>	<u>Correction</u>
p. 99, l. 16 and 18	Change: "Covan" to "Colvin"
p.106, l. 6	Change: "2000" to "2003" <u>Reason for Change:</u> typographical error, as the balance of my answer show
p.173, l. 21-24	Change: entire answer to "yes" <u>Reason for Change:</u> I misheard the question; this change is consistent with my prior answers
p.197, l. 3-4	Change; "pat at any time" to "patent" <u>Reason for Change:</u> transcription error
p. 198, l. 15-16	Change: "appear I can't say" to "appearance" <u>Reason for Change:</u> transcription or typographical error
p.228, l. 23	Change: "come" to "comes" <u>Reason for Change:</u> typographical error
p. 274, l. 11	Change: add "not" after "was" and before "our" <u>Reason for Change:</u> transcription error as shown by the earlier portion of that answer, particularly on lines 5-9 and my subsequent answers, e.g. on p. 275-76 and 283-84

p.300, l. 6


Change: "coincide" to "coincidence"

Reason for Change: typographical error

p.319, l. 4

Change: "?" to "."

Reason for Change: transcription or typographical error

  
\_\_\_\_\_  
Paul Sutton

Sworn to before me  
this ~~21<sup>st</sup>~~ day of July, 2008

  
\_\_\_\_\_  
Notary Public

LINDA GARRAMONE  
Notary Public, State of New York  
No. 01GA5047743  
Qualified in Suffolk County  
Commission Expires August 7, 2009



# EXHIBIT U

Page 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
QUICKIE, LLC,

Plaintiff,

vs.

07-CV-10331

GREENBERG TRAURIG, LLC,

(RMB) (DFE)

et al.,

Defendants.  
-----

DEPOSITION OF TODD SHARINN

Wednesday, June 11, 2008

9:30 a.m.

Reported by:

Joan Urzia, RPR

JOB NO. 203575

2 (Pages 2 to 5)

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2           June 11, 2008</p> <p>3           9:30 a.m.</p> <p>4           New York, New York</p> <p>5</p> <p>6</p> <p>7           DEPOSITION of TODD SHARINN, held</p> <p>8 at the offices of Diamond McCarthy, 620</p> <p>9 Eighth Avenue, New York, New York, pursuant</p> <p>10 to Notice, before Joan Urzia, a Notary</p> <p>11 Public of the State of New York.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2           IT IS HEREBY STIPULATED AND</p> <p>3 AGREED, by and between the attorneys</p> <p>4 for the respective parties herein, that</p> <p>5 filing and sealing be and the same are</p> <p>6 hereby waived.</p> <p>7           IT IS FURTHER STIPULATED AND</p> <p>8 AGREED that all objections, except as</p> <p>9 to the form of the question, shall be</p> <p>10 reserved to the time of the trial.</p> <p>11           IT IS FURTHER STIPULATED AND</p> <p>12 AGREED that the within deposition may</p> <p>13 be sworn to and signed before any</p> <p>14 officer authorized to administer an</p> <p>15 oath, with the same force and effect as</p> <p>16 if signed and sworn to before the</p> <p>17 Court.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2           A P P E A R A N C E S:</p> <p>3</p> <p>4</p> <p>5           DIAMOND MCCARTHY, LLP</p> <p>6 Attorneys for Plaintiff</p> <p>7           620 Eighth Avenue</p> <p>8           39th Floor</p> <p>9           New York, New York 10018</p> <p>10 BY: STEPHEN T. LODEN, ESQ.</p> <p>11           WALTER J. SCOTT, ESQ.</p> <p>12</p> <p>13</p> <p>14           POLLACK &amp; KAMINSKY</p> <p>15 Attorneys for Defendant</p> <p>16           114 West 47th Street</p> <p>17           New York, New York 10036</p> <p>18 BY: MARTIN I. KAMINSKY, ESQ.</p> <p>19           JUSTIN Y.K. CHU, ESQ.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1           T. Sharinn</p> <p>2 TODD SHARINN,</p> <p>3 called as a witness, having been duly</p> <p>4 sworn by a Notary Public, was examined</p> <p>5 and testified as follows:</p> <p>6 EXAMINATION BY</p> <p>7 MR. SCOTT:</p> <p>8           Q. My name is Skip Scott, together</p> <p>9 with my colleague Steve Loden, whom you've</p> <p>10 just met. We represent Quickie and we're</p> <p>11 with the law firm Diamond McCarthy.</p> <p>12           Could you please just identify</p> <p>13 yourself for the record.</p> <p>14           A. Sure. My name is Todd Sharinn.</p> <p>15           Q. Could you spell that, because it</p> <p>16 has a little unique spelling?</p> <p>17           A. It does S-H-A-R-I-N-N.</p> <p>18           Q. And you're appearing here</p> <p>19 pursuant to a deposition notice today,</p> <p>20 correct?</p> <p>21           A. Yes, sir.</p> <p>22           Q. Are you represented by counsel?</p> <p>23           A. I am, yes, sir.</p> <p>24           Q. Could you identify your counsel</p> <p>25 for us?</p>

3 (Pages 6 to 9)

<p style="text-align: right;">Page 6</p> <p>1           <b>T. Sharinn</b></p> <p>2     A.   Kaminsky &amp; Pollack.</p> <p>3     <b>Q.   Are you a party to this</b></p> <p>4 <b>litigation, to your understanding?</b></p> <p>5     A.   I am not.</p> <p>6     <b>Q.   You were previously a party to</b></p> <p>7 <b>this litigation?</b></p> <p>8     A.   I think I was a third-party</p> <p>9 defendant, if I'm not mistaken.</p> <p>10    <b>Q.   All right.</b></p> <p>11       MR. SCOTT: Why don't we go ahead</p> <p>12 and mark as our first exhibit this</p> <p>13 morning, deposition notice.</p> <p>14       (Exhibit 31, Deposition Notice,</p> <p>15 marked for identification, as of this</p> <p>16 date.)</p> <p>17 BY MR. SCOTT:</p> <p>18    <b>Q.   Mr. Sharinn, did you have a</b></p> <p>19 <b>chance to review the deposition notice</b></p> <p>20 <b>previously?</b></p> <p>21    A.   Yes, sir.</p> <p>22    <b>Q.   Are you appearing here today with</b></p> <p>23 <b>any documents pursuant to the document</b></p> <p>24 <b>request attached to that?</b></p> <p>25    A.   I'm not.</p>	<p style="text-align: right;">Page 8</p> <p>1           <b>T. Sharinn</b></p> <p>2 <b>the do's and don't's of deposition taking</b></p> <p>3 <b>and answering of questions.</b></p> <p>4     A.   I'm hoping to learn today.</p> <p>5     <b>Q.   Well, I can't promise you</b></p> <p>6 <b>anything in that regard.</b></p> <p>7       <b>What I would ask, though, is that</b></p> <p>8 <b>what I'm after today is your testimony,</b></p> <p>9 <b>what you can recall, and I'm not asking you</b></p> <p>10 <b>to speculate or to give an opinion or</b></p> <p>11 <b>anything of that nature.</b></p> <p>12       <b>So in terms of trying to move</b></p> <p>13 <b>forward through this deposition, if you</b></p> <p>14 <b>don't remember, that's fine. If you</b></p> <p>15 <b>weren't party to the communication or</b></p> <p>16 <b>anything like that, I would just ask you to</b></p> <p>17 <b>try and stay close to what it is that you</b></p> <p>18 <b>know from your own personal knowledge.</b></p> <p>19    A.   Yes, sir.</p> <p>20    <b>Q.   If you don't understand a</b></p> <p>21 <b>question, it's probably because I butchered</b></p> <p>22 <b>the question, and just ask me to repeat it</b></p> <p>23 <b>and I'll do my best to do so.</b></p> <p>24    A.   Yes, sir.</p> <p>25    <b>Q.   You understand that this</b></p>
<p style="text-align: right;">Page 7</p> <p>1           T. Sharinn</p> <p>2     <b>Q.   Okay.</b></p> <p>3       <b>Did you take an opportunity to</b></p> <p>4 <b>look through the document request just to</b></p> <p>5 <b>ensure that you didn't have any personal</b></p> <p>6 <b>files that you might have had, you know, at</b></p> <p>7 <b>home or in your office, that weren't</b></p> <p>8 <b>previously produced by your counsel?</b></p> <p>9     A.   I don't know exactly what was</p> <p>10 produced, but I did not have any files, and</p> <p>11 yes, I did -- to answer your question, yes,</p> <p>12 I did look.</p> <p>13    <b>Q.   Okay.</b></p> <p>14       <b>You understand that you're</b></p> <p>15 <b>appearing here today as a fact witness,</b></p> <p>16 <b>correct?</b></p> <p>17    A.   Yes, sir.</p> <p>18    <b>Q.   And you are an attorney, correct?</b></p> <p>19    A.   Yes, sir.</p> <p>20    <b>Q.   You have been engaged in</b></p> <p>21 <b>litigation as counsel, correct?</b></p> <p>22    A.   Yes, sir.</p> <p>23    <b>Q.   You've taken depositions?</b></p> <p>24    A.   I have.</p> <p>25    <b>Q.   So we can dispense with some of</b></p>	<p style="text-align: right;">Page 9</p> <p>1           <b>T. Sharinn</b></p> <p>2 <b>litigation concerns the failure to pay a</b></p> <p>3 <b>maintenance fee, in particular the 3.5-year</b></p> <p>4 <b>maintenance fee on a particular patent</b></p> <p>5 <b>known as the '160 Patent, correct?</b></p> <p>6     A.   Generally stated, yes.</p> <p>7     <b>Q.   Okay.</b></p> <p>8       <b>And you understand that that</b></p> <p>9 <b>patent was assigned to a former client of</b></p> <p>10 <b>Greenberg Traurig's and yours by the name</b></p> <p>11 <b>of Quickie, LLC, correct?</b></p> <p>12    A.   They were Greenberg's client,</p> <p>13 yes, sir.</p> <p>14    <b>Q.   What, if anything, have you done</b></p> <p>15 <b>in preparation for your deposition here</b></p> <p>16 <b>today? Give me a sense of what documents</b></p> <p>17 <b>or volume of documents you might have</b></p> <p>18 <b>looked at and things of that nature.</b></p> <p>19    A.   I met with my attorneys and they</p> <p>20 showed me some documents. Specifically</p> <p>21 which ones would be hard to identify, but</p> <p>22 we discussed the contents of those</p> <p>23 documents and tried to refresh my</p> <p>24 recollection as best as possible so that I</p> <p>25 could provide you with as full testimony as</p>

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<p style="text-align: right;">Page 10</p> <p>1 T. Sharinn</p> <p>2 possible today.</p> <p>3 <b>Q. Did you look at any of your --</b></p> <p>4 <b>when I say yours, Greenberg Traurig's,</b></p> <p>5 <b>invoices for Quickie?</b></p> <p>6 A. I think we discussed them</p> <p>7 generally, but I don't recall whether I had</p> <p>8 actually looked at any or not. I think I</p> <p>9 may have looked at one or two.</p> <p>10 <b>Q. All right.</b></p> <p>11 <b>And then generally just some</b></p> <p>12 <b>correspondence during the time period, the</b></p> <p>13 <b>relevant time period?</b></p> <p>14 A. We did look at a couple of</p> <p>15 correspondence, yes, sir.</p> <p>16 <b>Q. About how much time did you spend</b></p> <p>17 <b>with your attorneys?</b></p> <p>18 A. In total, probably about two and</p> <p>19 a half hours, including this morning.</p> <p>20 <b>Q. So some this morning as well as</b></p> <p>21 <b>some yesterday or the day before?</b></p> <p>22 A. Something like that, yes, sir.</p> <p>23 <b>Q. All right.</b></p> <p>24 <b>Have you previously given</b></p> <p>25 <b>testimony in any suits?</b></p>	<p style="text-align: right;">Page 12</p> <p>1 T. Sharinn</p> <p>2 Trademark Office allows you to revive the</p> <p>3 patent to bring it back to life again.</p> <p>4 I was asked by a gentleman out of</p> <p>5 Virginia --</p> <p>6 <b>Q. Mr. Maier?</b></p> <p>7 A. Yes, sir, I didn't remember his</p> <p>8 name.</p> <p>9 <b>Q. That's okay.</b></p> <p>10 A. -- to sign a declaration</p> <p>11 regarding my involvement in the case.</p> <p>12 <b>Q. Do you recall another affidavit</b></p> <p>13 <b>in which you were asked by Mr. Evens to</b></p> <p>14 <b>attest to prior art reviewed by you in</b></p> <p>15 <b>connection with the second re-examination</b></p> <p>16 <b>for the '160 Patent?</b></p> <p>17 A. I didn't even know there were two</p> <p>18 reexaminations, so no, I don't.</p> <p>19 <b>Q. Any other affidavits that you can</b></p> <p>20 <b>recall providing in connection with this</b></p> <p>21 <b>particular patent, the '160 Patent?</b></p> <p>22 A. Only the one I discussed with</p> <p>23 you.</p> <p>24 <b>Q. Okay.</b></p> <p>25 A. If you want to show me a</p>
<p style="text-align: right;">Page 11</p> <p>1 T. Sharinn</p> <p>2 A. No, sir.</p> <p>3 <b>Q. Either by way of deposition or at</b></p> <p>4 <b>trial?</b></p> <p>5 A. No, sir.</p> <p>6 <b>Q. I noted in some of the</b></p> <p>7 <b>correspondence that there was reference to</b></p> <p>8 <b>your possibly testifying in connection with</b></p> <p>9 <b>the Medtronic litigation.</b></p> <p>10 <b>That never occurred?</b></p> <p>11 A. I don't recall me testifying or</p> <p>12 being asked to testify.</p> <p>13 <b>Q. Do you recall providing an</b></p> <p>14 <b>affidavit in connection with the Medtronic</b></p> <p>15 <b>litigation?</b></p> <p>16 A. I do, but it was not in regards</p> <p>17 to the Medtronic litigation.</p> <p>18 <b>Q. What was that in regards to?</b></p> <p>19 A. My recollection was it was in a</p> <p>20 petition to revive the '160 Patent.</p> <p>21 <b>Q. Petition to revive, can you</b></p> <p>22 <b>explain what that is?</b></p> <p>23 A. Technical terms, patent goes</p> <p>24 abandoned through no fault of your own, it</p> <p>25 could be just circumstances, the Patent and</p>	<p style="text-align: right;">Page 13</p> <p>1 T. Sharinn</p> <p>2 document, maybe it can refresh my</p> <p>3 recollection.</p> <p>4 <b>Q. I just want to get a general feel</b></p> <p>5 <b>of what you might, and then we may get to</b></p> <p>6 <b>some specific documents as we go.</b></p> <p>7 A. Okay.</p> <p>8 <b>Q. You are a licensed patent</b></p> <p>9 <b>attorney?</b></p> <p>10 A. Yes, sir.</p> <p>11 <b>Q. When did you pass the patent bar</b></p> <p>12 <b>and begin practicing as a patent attorney?</b></p> <p>13 A. I don't recall. It's been a long</p> <p>14 time, though. Well over 10 years.</p> <p>15 <b>Q. Did you take the patent bar</b></p> <p>16 <b>immediately or shortly upon being licensed</b></p> <p>17 <b>as an attorney, or did you wait some time?</b></p> <p>18 A. I don't remember. You know, if</p> <p>19 you give me a moment to think. I think it</p> <p>20 was pretty close to about the time I got</p> <p>21 licensed as an attorney.</p> <p>22 <b>Q. The reason I asked is that I've</b></p> <p>23 <b>taken the liberty of pulling up your press</b></p> <p>24 <b>release and bio upon joining Harris Beach.</b></p> <p>25 A. Was it good?</p>

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<p style="text-align: right;">Page 14</p> <p>1 T. Sharinn</p> <p>2 <b>Q. Actually, it is, and</b></p> <p>3 <b>congratulations on your partnership.</b></p> <p>4 A. Okay, I hadn't read it, so I</p> <p>5 don't know.</p> <p>6 <b>Q. Let me just hand it to you and</b></p> <p>7 <b>you don't need to go through it all. It's</b></p> <p>8 <b>Exhibit 32.</b></p> <p>9 <b>(Exhibit 32, Press release and</b></p> <p>10 <b>biography, marked for identification,</b></p> <p>11 <b>as of this date.)</b></p> <p>12 <b>BY MR. SCOTT:</b></p> <p>13 <b>Q. I'm happy for you to read about</b></p> <p>14 <b>yourself at your leisure --</b></p> <p>15 A. I prefer not to. I try to avoid</p> <p>16 reading about myself.</p> <p>17 <b>Q. So if I can direct your attention</b></p> <p>18 <b>then and bypass some of that --</b></p> <p>19 A. That would be great.</p> <p>20 <b>Q. -- to the third page JD 1991 from</b></p> <p>21 <b>Cardoza Law School.</b></p> <p>22 A. That's right.</p> <p>23 <b>Q. And then in just looking at the</b></p> <p>24 <b>licensures, United States Patent Bar 1998,</b></p> <p>25 <b>and does that refresh your recollection as</b></p>	<p style="text-align: right;">Page 16</p> <p>1 T. Sharinn</p> <p>2 <b>Q. And you were there for about how</b></p> <p>3 <b>long?</b></p> <p>4 A. A couple of years, few years.</p> <p>5 <b>Q. Okay.</b></p> <p>6 <b>And then you moved to the east</b></p> <p>7 <b>coast?</b></p> <p>8 A. I did.</p> <p>9 <b>Q. And Pepe &amp; Hazard or --</b></p> <p>10 A. No, no, I took a coaching job</p> <p>11 with Yale, so I worked with a patent</p> <p>12 boutique called St. Onge.</p> <p>13 <b>Q. And where is that firm?</b></p> <p>14 A. New Haven.</p> <p>15 <b>Q. And then you were there for how</b></p> <p>16 <b>long?</b></p> <p>17 A. About a year, and then I took a</p> <p>18 job somewhere else for coaching hockey. I</p> <p>19 was head coach at Villanova. The early</p> <p>20 part of my legal career followed my hockey</p> <p>21 career.</p> <p>22 <b>Q. So you were working at a</b></p> <p>23 <b>different law firm while you were moving</b></p> <p>24 <b>from different coaching positions?</b></p> <p>25 A. Well, playing and coaching, yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 T. Sharinn</p> <p>2 <b>to any gap?</b></p> <p>3 A. Yes, sir.</p> <p>4 <b>Q. So when you first came out of law</b></p> <p>5 <b>school and began practicing -- by the way,</b></p> <p>6 <b>where did you first start out at?</b></p> <p>7 A. I was at a firm in Los Angeles</p> <p>8 called Pom Smith Lande &amp; Rose.</p> <p>9 <b>Q. All right.</b></p> <p>10 <b>And just so I have it clear in my</b></p> <p>11 <b>mind, can you maybe just walk me through</b></p> <p>12 <b>the benchmarks of the different firms that</b></p> <p>13 <b>you've been at during the course of your</b></p> <p>14 <b>career?</b></p> <p>15 A. To the best of my recollection, I</p> <p>16 moved around a lot, so it's hard to --</p> <p>17 <b>Q. Everybody does nowadays.</b></p> <p>18 A. I was also playing hockey</p> <p>19 professionally at the time.</p> <p>20 <b>Q. Well, I'll ask you about that on</b></p> <p>21 <b>a break. I'm sorry, the firm -- I don't</b></p> <p>22 <b>know the name of that firm.</b></p> <p>23 A. Pom Smith Lande &amp; Rose.</p> <p>24 <b>Q. And that's an L.A. firm?</b></p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 17</p> <p>1 T. Sharinn</p> <p>2 <b>Q. Well, then, just walk me through.</b></p> <p>3 <b>So you were then at Villanova?</b></p> <p>4 A. Yes, sir.</p> <p>5 <b>Q. And that's in Pennsylvania?</b></p> <p>6 A. It is.</p> <p>7 <b>Q. And what's the firm there?</b></p> <p>8 A. I did a lot of work for St. Onge</p> <p>9 actually by proxy.</p> <p>10 <b>Q. Okay. So you were in a sense</b></p> <p>11 <b>freelancing a bit?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. All right.</b></p> <p>14 <b>And so what's the next firm that</b></p> <p>15 <b>you associate yourself with during this --</b></p> <p>16 A. Well, pretty much my hockey</p> <p>17 career came to an abrupt end and I went and</p> <p>18 worked for one of my law school professors,</p> <p>19 it was a firm called Levenson Lerner.</p> <p>20 <b>Q. And where is that?</b></p> <p>21 A. New York City.</p> <p>22 <b>Q. And you were there for how long?</b></p> <p>23 A. About a year.</p> <p>24 <b>Q. And then you --</b></p> <p>25 A. Bryan Cave.</p>

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<p style="text-align: right;">Page 18</p> <p>1 T. Sharinn</p> <p>2 <b>Q. And then for how long?</b></p> <p>3 A. I don't know, a couple of years.</p> <p>4 <b>Q. And then where?</b></p> <p>5 A. Pepe &amp; Hazard.</p> <p>6 <b>Q. And you were at Pepe for how</b></p> <p>7 <b>long?</b></p> <p>8 A. About a couple of years, maybe a</p> <p>9 little more.</p> <p>10 <b>Q. And then we get to, you go</b></p> <p>11 <b>straight from Pepe to Greenberg?</b></p> <p>12 A. Yes, sir.</p> <p>13 <b>Q. The reason I ask is --</b></p> <p>14 A. No, no, that's correct.</p> <p>15 <b>Q. -- there's a letter in which a</b></p> <p>16 <b>Pepe &amp; Hazard attorney is asking about</b></p> <p>17 <b>transferring files and saying that you're</b></p> <p>18 <b>going to open up your own shop.</b></p> <p>19 A. Oh, I didn't tell them where I</p> <p>20 was going.</p> <p>21 <b>Q. All right.</b></p> <p>22 <b>So Greenberg then, and then after</b></p> <p>23 <b>Greenberg, Baker McKenzie?</b></p> <p>24 A. Baker.</p> <p>25 <b>Q. And then after Baker McKenzie to?</b></p>	<p style="text-align: right;">Page 20</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>patent litigation?</b></p> <p>3 A. Well, first, let's take a step</p> <p>4 back from that, if it's okay. A lot of my</p> <p>5 practice was also in trademark litigation</p> <p>6 or trademark prosecution, copyright</p> <p>7 counseling, to the degree there's</p> <p>8 prosecution and litigation as well.</p> <p>9 But litigation versus</p> <p>10 prosecution, I would have to say it was</p> <p>11 probably 15 to 85 in favor of litigation,</p> <p>12 give or take.</p> <p>13 <b>Q. About what percentage of your</b></p> <p>14 <b>practice has been directed or focused on</b></p> <p>15 <b>other intellectual property interest,</b></p> <p>16 <b>copyrights, trademarks as opposed to</b></p> <p>17 <b>patents?</b></p> <p>18 A. It's varied over the years. More</p> <p>19 recently, it's moved more closer to more</p> <p>20 trademark than patent, but it's always been</p> <p>21 kind of 50/50 depending on the year.</p> <p>22 When I grew up as an attorney, an</p> <p>23 IP attorney did everything, you didn't</p> <p>24 just -- today it's very specialized, today</p> <p>25 you're a trademark litigator and you may</p>
<p style="text-align: right;">Page 19</p> <p>1 <b>T. Sharinn</b></p> <p>2 A. Harris.</p> <p>3 <b>Q. To Harris.</b></p> <p>4 <b>All right. That's a little more</b></p> <p>5 <b>traveling than most.</b></p> <p>6 <b>During all of that time, were you</b></p> <p>7 <b>practicing in the intellectual property</b></p> <p>8 <b>space?</b></p> <p>9 A. Yes, sir.</p> <p>10 <b>Q. Prior to taking and passing the</b></p> <p>11 <b>patent bar, I take it that you were</b></p> <p>12 <b>primarily involved with the patent</b></p> <p>13 <b>litigation side of the business?</b></p> <p>14 A. Primarily.</p> <p>15 <b>Q. Well, let me just ask then, were</b></p> <p>16 <b>you, prior to taking the patent bar,</b></p> <p>17 <b>prosecuting any patent applications?</b></p> <p>18 A. Under the supervision of other</p> <p>19 attorneys, yes, sir. In fact, even after I</p> <p>20 passed the patent bar, I was still under</p> <p>21 the supervision of most senior attorneys.</p> <p>22 <b>Q. Can you kind of give a percentage</b></p> <p>23 <b>over the course of your career as to how</b></p> <p>24 <b>much of your practice has been in the</b></p> <p>25 <b>patent prosecution space as opposed to</b></p>	<p style="text-align: right;">Page 21</p> <p>1 T. Sharinn</p> <p>2 just be a counterfeiting litigator, you may</p> <p>3 not even be just a trademark litigator.</p> <p>4 Back when I was first working as</p> <p>5 an associate at these various firms, you</p> <p>6 were expected to do a little bit of</p> <p>7 everything and to learn and to hopefully</p> <p>8 mature into a specialty that suited you and</p> <p>9 the firm best.</p> <p>10 <b>Q. And so have you matured into a</b></p> <p>11 <b>specialty that is more directed towards</b></p> <p>12 <b>trademark?</b></p> <p>13 A. I think that's where I felt most</p> <p>14 comfortable litigating, what I've enjoyed</p> <p>15 most.</p> <p>16 <b>Q. And more specifically, I take it</b></p> <p>17 <b>from some of the things that are mentioned</b></p> <p>18 <b>in terms of representations in the</b></p> <p>19 <b>counterfeiting knock-off type goods?</b></p> <p>20 A. Yes, sir. That's where I've had</p> <p>21 my greatest fortune.</p> <p>22 <b>Q. Do you recognize -- I don't even</b></p> <p>23 <b>know if it's a bisection or perhaps it's</b></p> <p>24 <b>even more than that in terms of patent</b></p> <p>25 <b>lawyers or intellectual property lawyers</b></p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 22</p> <p>1 <b>T. Sharinn</b>  2 <b>who are more on the prosecution application</b>  3 <b>side of it versus those who are on the</b>  4 <b>litigation side of it?</b>  5 A. You know, that's a tough question  6 to answer just for a couple of reasons.  7 One, I haven't seen or discussed  8 people's specific day to days with them  9 unless they were my partner or a colleague,  10 pretty close, a pretty close colleague. So  11 I don't know what consumed them 50 percent  12 or 90 percent of their days.  13 What I would say, though, as a  14 general overview for being in the industry  15 is I've noticed that when I was younger,  16 everybody did everything and now people are  17 much more specialized, or at least claim to  18 be.  19 <b>Q. It is the case, is it not, that</b>  20 <b>an attorney can litigate a patent without</b>  21 <b>being a licensed patent attorney before the</b>  22 <b>PTO?</b>  23 A. I think that's correct -- well,  24 they don't litigate in front of the PTO.  25 You're talking about litigation, you do</p>	<p style="text-align: right;">Page 24</p> <p>1 <b>T. Sharinn</b>  2 A. That's my understanding.  3 <b>Q. Can you just patent anything, or</b>  4 <b>are there some general standards that a</b>  5 <b>patent attorney has to abide by in deciding</b>  6 <b>whether or not something that a client</b>  7 <b>comes to them with can be patented?</b>  8 A. Well, I mean, there's two  9 questions there, can you or should you.  10 On the "can" side, we can  11 obviously do anything we want, although  12 ethically we may be doing the wrong thing.  13 "Should we" is where it really  14 plays into -- I can only speak from my own  15 personal experiences.  16 <b>Q. Let me rephrase then.</b>  17 <b>Would you, as a licensed patent</b>  18 <b>attorney, patent something that you did not</b>  19 <b>believe was in fact patentable?</b>  20 A. No.  21 <b>Q. And what makes something in your</b>  22 <b>opinion patentable?</b>  23 A. Just look at the Rules 101  24 through 103.  25 <b>Q. So it has to be new or novel?</b></p>
<p style="text-align: right;">Page 23</p> <p>1 <b>T. Sharinn</b>  2 with the PTO's administrative and it would  3 be for an interference or looking to force  4 a reissue or re-examination. But you would  5 litigate in front of a federal court.  6 <b>Q. Right.</b>  7 <b>And so again, I'm just trying to</b>  8 <b>get a sense of, there are those who are out</b>  9 <b>there in infringement litigation in the</b>  10 <b>district courts who don't necessarily have</b>  11 <b>to be licensed before the PTO, right?</b>  12 A. That's correct.  13 <b>Q. And then there are those who</b>  14 <b>might do administrative enforcement or</b>  15 <b>adversarial actions before the PTO that</b>  16 <b>need to be licensed by the Patent Office?</b>  17 A. I don't know specifically whether  18 someone who is unlicensed could handle one  19 of these administrative actions in front of  20 the PTO. I'm not familiar with those  21 specific rules. It's never been an issue  22 that was presented to me.  23 <b>Q. It is the case that you cannot</b>  24 <b>prosecute an application before the PTO</b>  25 <b>unless you're licensed by the PTO?</b></p>	<p style="text-align: right;">Page 25</p> <p>1 <b>T. Sharinn</b>  2 A. Of course.  3 <b>Q. And there can't be any prior art</b>  4 <b>that essentially teaches the same</b>  5 <b>invention?</b>  6 A. That would be 102.  7 <b>Q. And I'm not going to let you test</b>  8 <b>me, my full knowledge of the various</b>  9 <b>provisions, but essentially those rules</b>  10 <b>that say something is unique are the ones</b>  11 <b>that you would apply?</b>  12 A. I would, but there is also the  13 other thing that comes into play when  14 you're really, if you're really going to  15 counsel a client appropriately is for them  16 to understand the expense they're going to  17 put in for doing this and what the value of  18 the invention really is.  19 <b>Q. You're ahead of me, because I was</b>  20 <b>just going to ask even if a person came to</b>  21 <b>you and had something that was perhaps</b>  22 <b>novel and unique and whatnot, but you did</b>  23 <b>not believe it to be commercially feasible,</b>  24 <b>would you advise that client and undertake</b>  25 <b>to try and patent it?</b></p>



8 (Pages 26 to 29)

<p style="text-align: right;">Page 26</p> <p>1 <b>T. Sharinn</b></p> <p>2 A. I would advise that client that I</p> <p>3 didn't think it was commercially viable.</p> <p>4 If the client assured me that they felt</p> <p>5 they were okay with that, they were willing</p> <p>6 to take the risk because they had a</p> <p>7 passion, I would probably still undertake</p> <p>8 to file the application if I felt it was at</p> <p>9 least patentable.</p> <p>10 <b>Q. Have you ever undertaken to</b></p> <p>11 <b>pursue the prosecution of a patent that you</b></p> <p>12 <b>did not believe to be commercially viable</b></p> <p>13 <b>on behalf of a client?</b></p> <p>14 A. If I had a strong belief, one of</p> <p>15 my problems has always been that I'm not a</p> <p>16 yes guy. It's been an issue for me</p> <p>17 throughout my life. I'm very quick to tell</p> <p>18 people if I don't agree with something.</p> <p>19 I'll think about it, but I will be honest,</p> <p>20 sometimes to a fault.</p> <p>21 So to answer your question</p> <p>22 honestly, no, I wouldn't. If I really</p> <p>23 thought something had no chance of success,</p> <p>24 I would suggest they find another counsel.</p> <p>25 Having said that, if the client</p>	<p style="text-align: right;">Page 28</p> <p>1 T. Sharinn</p> <p>2 <b>Q. And I'm just trying to step back</b></p> <p>3 <b>a little bit, and I understand you have a</b></p> <p>4 <b>degree in molecular biology or something</b></p> <p>5 <b>like that?</b></p> <p>6 A. Yeah, but don't hold it against</p> <p>7 me.</p> <p>8 <b>Q. I'm not even sure I know what it</b></p> <p>9 <b>is to hold it against you.</b></p> <p>10 A. Genetic engineering.</p> <p>11 <b>Q. In any event, these are all</b></p> <p>12 <b>inventions and procedures associated with</b></p> <p>13 <b>heart surgery, correct?</b></p> <p>14 A. Well, yes and no. The Quickie</p> <p>15 invention that's at the center of this --</p> <p>16 <b>Q. The 160?</b></p> <p>17 A. Yes, sir -- was initially</p> <p>18 intended for minimally invasive open heart</p> <p>19 surgery.</p> <p>20 However, if you read the</p> <p>21 application and the claims as originally</p> <p>22 drafted, those claims were much broader</p> <p>23 than that with the intention of being able</p> <p>24 to make it applicable to more than just</p> <p>25 minimally invasive heart surgery, and</p>
<p style="text-align: right;">Page 27</p> <p>1 T. Sharinn</p> <p>2 was of means and had assured me that they</p> <p>3 were willing to take this risk and that</p> <p>4 they were big girls or big boys and really</p> <p>5 believed that I didn't understand the</p> <p>6 industry correctly, and it would be a lot</p> <p>7 of conversation, then I might, under those</p> <p>8 circumstances, file a patent application</p> <p>9 and I can tell you right now since we're</p> <p>10 sitting here for these clients that at</p> <p>11 least on one occasion I had done that.</p> <p>12 <b>Q. All right.</b></p> <p>13 <b>What was that occasion?</b></p> <p>14 A. That would be for S&amp;A Rings.</p> <p>15 <b>Q. S&amp;A rings is --</b></p> <p>16 A. Is another iteration of Quickie</p> <p>17 that was owned by Colvin, et al., and was</p> <p>18 for various angioplasty rings and they</p> <p>19 developed and technology relating to it.</p> <p>20 <b>Q. A separate patent from the '160</b></p> <p>21 <b>Patent?</b></p> <p>22 A. It is separate.</p> <p>23 <b>Q. Involving --</b></p> <p>24 A. In that case, it involved memory</p> <p>25 metal.</p>	<p style="text-align: right;">Page 29</p> <p>1 T. Sharinn</p> <p>2 rather just minimally invasive surgery or</p> <p>3 surgical techniques, and that's how it was</p> <p>4 initially issued. I have not seen the</p> <p>5 re-examine.</p> <p>6 <b>Q. So just to see if I understand,</b></p> <p>7 <b>and I'm not going to try and delve into</b></p> <p>8 <b>this too much, the '160 Patent involves</b></p> <p>9 <b>essentially a knotless means of terminating</b></p> <p>10 <b>sutures, is that fair?</b></p> <p>11 A. That's what we called it. It was</p> <p>12 a boat cleat.</p> <p>13 <b>Q. So rather than having to tie off</b></p> <p>14 <b>a suture --</b></p> <p>15 A. It's a boat cleat. That's what</p> <p>16 it was. I mean, that's how it was</p> <p>17 invented. Paul Otto and Steve Colvin</p> <p>18 fishing on a boat, came up with a boat</p> <p>19 cleat, called me from the boat.</p> <p>20 <b>Q. I understand that. I'm not sure</b></p> <p>21 <b>the jury would even know what a boat cleat</b></p> <p>22 <b>necessarily does.</b></p> <p>23 A. Probably more than a suture.</p> <p>24 <b>Q. So I'm trying to describe</b></p> <p>25 <b>essentially a means of not having to tie</b></p>

9 (Pages 30 to 33)

<p style="text-align: right;">Page 30</p> <p>1 <b>T. Sharinn</b>  2 <b>off a suture during a surgery --</b>  3 A. During a procedure.  4 <b>Q. -- during a procedure, whether it</b>  5 <b>was on the heart, the leg, another internal</b>  6 <b>organ or an appendage to the body?</b>  7 A. No.  8 <b>Q. I went too far.</b>  9 A. You went too far. A minimally  10 invasive surgical procedure is what it was  11 directed towards.  12 <b>Q. All right.</b>  13 <b>Fair enough. I think we have a</b>  14 <b>sense of it.</b>  15 <b>The S&amp;A rings or SA Rings also</b>  16 <b>involved surgery and a means of doing a</b>  17 <b>procedure, correct?</b>  18 A. No. They had various inventions.  19 Some of them dealt with devices that were  20 used to replace valves inside the heart or  21 arteries. They had other inventions that  22 would have involved tying, closing a knot  23 or tying off a suture without having to tie  24 a knot. They had a concentric ring  25 invention that I had forgotten about until</p>	<p style="text-align: right;">Page 32</p> <p>1 T. Sharinn  2 that they had different owners depending  3 upon who was involved in the invention and  4 what degree they played.  5 <b>Q. So you, for example, were working</b>  6 <b>on matters involving Quickie vision?</b>  7 A. Yes, sir.  8 <b>Q. As a separate entity from</b>  9 <b>Quickie, LLC?</b>  10 A. That would be what I would hope  11 to do, yes.  12 <b>Q. Well, in fact you did do,</b>  13 <b>correct?</b>  14 A. Yeah. I mean, it got blurred at  15 times because Alan Fell was really the  16 common denominator and so was Steve Colvin.  17 So when I represented any of these  18 entities, it was constant interaction with  19 both of them and the bills would get sent  20 to basically Allan Fell to sort out.  21 <b>Q. All right.</b>  22 <b>Just in terms of some of the</b>  23 <b>other entities that you may have had some</b>  24 <b>involvement with, do you recall liberty?</b>  25 A. Liberty Health, you mean?</p>
<p style="text-align: right;">Page 31</p> <p>1 T. Sharinn  2 preparing for this that involved pulling  3 sutures through concentric rings.  4 <b>Q. And the common denominator here</b>  5 <b>is all of these things were involved in</b>  6 <b>surgery?</b>  7 A. They would be involved in  8 minimally invasive surgery.  9 <b>Q. Right.</b>  10 A. And in some cases very  11 specifically in just heart surgery.  12 <b>Q. And all of these were different</b>  13 <b>permutations or inventions that you were</b>  14 <b>working with Quickie together on?</b>  15 A. Quickie or other companies that  16 were owned by the same people from Quickie.  17 <b>Q. You see where I'm trying to go?</b>  18 A. No, I don't.  19 <b>Q. That there were other Quickie</b>  20 <b>affiliates that you were also working with?</b>  21 A. No, they weren't affiliates.  22 They were separate entities. I don't know  23 exactly the structure, you'll have to ask  24 Allan Fell because he's the one who set all  25 of those up, but my recollection was, is</p>	<p style="text-align: right;">Page 33</p> <p>1 T. Sharinn  2 <b>Q. Yes.</b>  3 A. Yes, sir.  4 <b>Q. And that was a separate entity,</b>  5 <b>to your understanding, from Quickie LLC?</b>  6 A. Absolutely. That was -- I don't  7 even remember anymore, it's been a long  8 time, a lot of life, but I think that was  9 some kind of a wellness center or something  10 that Steve, meaning Steve Colvin, had  11 wanted to create.  12 <b>Q. And was that more of a branding</b>  13 <b>trademarking --</b>  14 A. That was all trademark. There  15 was no patent there, to my recollection.  16 Again, if I'm wrong, I apologize, but let  17 me just state right now for the record it's  18 been a lot of life since I've did this  19 work.  20 <b>Q. Understood.</b>  21 A. So, you know, maybe I just don't  22 have the greatest memory, but I'm trying.  23 <b>Q. Do you recall the surgical drape?</b>  24 A. I don't. You know, it's funny, I  25 remember the title. I have no idea what</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 34</p> <p>1 T. Sharinn</p> <p>2 the invention regards.</p> <p>3 <b>Q. How about the surgical hooks?</b></p> <p>4 A. No. Again, you know, I remember</p> <p>5 the name, but I don't remember the specific</p> <p>6 invention.</p> <p>7 There are three inventions, four</p> <p>8 actually that I have any specific</p> <p>9 recollection of.</p> <p>10 <b>Q. What are those?</b></p> <p>11 A. One is the high definition</p> <p>12 endoscope, only because that was right when</p> <p>13 HDTV came out and I just thought it was</p> <p>14 really cool.</p> <p>15 <b>Q. And what did that basically</b></p> <p>16 <b>entail?</b></p> <p>17 A. It entailed using, if I remember</p> <p>18 correctly -- it's hard for me to describe</p> <p>19 at this point --</p> <p>20 <b>Q. That's why I asked you to, not</b></p> <p>21 <b>me.</b></p> <p>22 A. It involved using filaments to</p> <p>23 carry the light from the source to an HD</p> <p>24 screen, and the way the filaments were</p> <p>25 packed in the endoscopic tools was</p>	<p style="text-align: right;">Page 36</p> <p>1 T. Sharinn</p> <p>2 would be the Quickie patent.</p> <p>3 <b>Q. Were any of the other inventions</b></p> <p>4 <b>actually patented by you?</b></p> <p>5 A. I don't recall. I'd have to</p> <p>6 look. Nobody's shown me anything.</p> <p>7 <b>Q. Do you recall the '745 Patent?</b></p> <p>8 A. Not by number. What is it?</p> <p>9 MR. SCOTT: Let me just go ahead</p> <p>10 and take these a little bit out of</p> <p>11 order.</p> <p>12 (Exhibit 33, Document, marked for</p> <p>13 identification, as of this date.)</p> <p>14 BY MR. SCOTT:</p> <p>15 <b>Q. I'll hand you Exhibit 33 to your</b></p> <p>16 <b>deposition.</b></p> <p>17 <b>I'll give you a second to look at</b></p> <p>18 <b>that.</b></p> <p>19 A. Oh, look at that. Is that what</p> <p>20 it is, the concentric --</p> <p>21 <b>Q. Is that one of the S&amp;A rings that</b></p> <p>22 <b>you were talking about?</b></p> <p>23 A. It is, yes, sir.</p> <p>24 <b>Q. And that's a patent that you</b></p> <p>25 <b>prosecuted to issuance while at Greenberg</b></p>
<p style="text-align: right;">Page 35</p> <p>1 T. Sharinn</p> <p>2 different than it would have been with an</p> <p>3 analog picture. So it's more of a digital</p> <p>4 situation.</p> <p>5 <b>Q. That was one of them.</b></p> <p>6 <b>The second one?</b></p> <p>7 A. Would be those two S&amp;A Rings</p> <p>8 inventions, the memory metal, which is one</p> <p>9 that I really didn't want to file and</p> <p>10 basically was told by Steve I had a choice</p> <p>11 of either filing it or being fired, and we</p> <p>12 went around on that for a long time and we</p> <p>13 agreed to work on it, and Gene Grassi put a</p> <p>14 lot of time in that to really create an</p> <p>15 invention out of what they originally</p> <p>16 disclosed to me.</p> <p>17 And it was, it is an invention.</p> <p>18 I just didn't see it being as particularly</p> <p>19 marketable invention.</p> <p>20 And then the last one --</p> <p>21 <b>Q. You said two S&amp;A rings --</b></p> <p>22 A. Yeah, I was about to say the last</p> <p>23 S&amp;A ring would be the concentric rings.</p> <p>24 And then there's obviously the</p> <p>25 patent that's in the center of this, which</p>	<p style="text-align: right;">Page 37</p> <p>1 T. Sharinn</p> <p>2 <b>Taurig, correct?</b></p> <p>3 A. Yes, sir. I think it was started</p> <p>4 while I was at Pepe &amp; Hazard, but I don't</p> <p>5 recall offhand. I'd have to look at the</p> <p>6 file.</p> <p>7 <b>Q. Does this refresh your</b></p> <p>8 <b>recollection as to any other inventions or</b></p> <p>9 <b>permutations that you might have pursued to</b></p> <p>10 <b>issuance on behalf of Quickie or any of its</b></p> <p>11 <b>affiliates like Liberty or Quickie Vision?</b></p> <p>12 A. Again, I don't know what the</p> <p>13 relationships are as far as how they're</p> <p>14 affiliated. That would be something to ask</p> <p>15 Mr. Fell.</p> <p>16 It does not jog my memory other</p> <p>17 than you've shown me this. If you have</p> <p>18 other ones like this, I'm more than happy</p> <p>19 to confirm whether or not they were ones</p> <p>20 that I have specific recollection of. But</p> <p>21 this doesn't surprise me that this one</p> <p>22 actually did issue. I was actually</p> <p>23 wondering if it did.</p> <p>24 <b>Q. I want to step back and try and</b></p> <p>25 <b>get a handle on how it is that you came to</b></p>

11 (Pages 38 to 41)

<p style="text-align: right;">Page 38</p> <p>1 <b>T. Sharinn</b>  2 <b>first represent Quickie or, I don't know</b>  3 <b>how to try and lump in the others, the</b>  4 <b>Colvin interests, if you will.</b>  5 A. That's how I would refer to them,  6 as the Colvin group.  7 The way I came to Steve Colvin  8 was through Alan Fell. He had brought me  9 into the fold, for lack of a better term.  10 <b>Q. General --</b>  11 A. Probably back at Levenson Lerner  12 or Bryan Cave, one of those. Probably more  13 like Bryan Cave. Levenson Lerner was just  14 a short period because I had just finished  15 a hockey career. He was my patent  16 professor, I had scored highest in his  17 class, and he had asked me to help him try  18 a case.  19 When the case was over, we had  20 agreed -- he actually offered me a job, but  21 I didn't want to be in that small of a  22 boutique. In retrospect, maybe it wasn't  23 my smartest career move, I don't know.  24 <b>Q. Bryan Cave, are we talking</b>  25 <b>1995-ish?</b></p>	<p style="text-align: right;">Page 40</p> <p>1 T. Sharinn  2 <b>Q. I chuckle only because I've had</b>  3 <b>my own path and so there's not a lot of</b>  4 <b>dissimilarity in some respects.</b>  5 A. No, stuff happens and I probably  6 would have stayed at Pepe longer, but my  7 ex-wife didn't like living up in the  8 Hartford area, so we left.  9 <b>Q. And so how did Alan Fell find you</b>  10 <b>out, so to speak?</b>  11 A. My parents and Alan knew each  12 other. If I'm not mistaken, Alan may have  13 actually done their will some years ago.  14 Again, this is -- it's spelled  15 F-E-L-L, not F-E-L-D. Sorry, I just  16 unfortunately learned to read upside down.  17 <b>Q. And so there is some family</b>  18 <b>connection and he then approaches you in</b>  19 <b>connection with doing some intellectual</b>  20 <b>property work for a client of his?</b>  21 A. Yes, sir.  22 <b>Q. And was the representation or</b>  23 <b>involvement that you had at the</b>  24 <b>beginning -- I'm trying to get a sense of</b>  25 <b>was it one-dimensional, here is a specific</b></p>
<p style="text-align: right;">Page 39</p> <p>1 <b>T. Sharinn</b>  2 A. I don't know offhand. You  3 probably have that information already  4 somewhere.  5 <b>Q. Not really, but I suppose I could</b>  6 <b>find it.</b>  7 <b>In any event --</b>  8 A. I don't know.  9 <b>Q. -- prior to Pepe &amp; Hazard though,</b>  10 <b>to your recollection?</b>  11 A. Oh, absolutely.  12 <b>Q. And the Pepe &amp; Hazard stint, I</b>  13 <b>don't mean to be pejorative in any sense --</b>  14 A. None taken.  15 <b>Q. -- was essentially from, say, the</b>  16 <b>1998 to 2000 time frame?</b>  17 A. Again, I don't remember the  18 specific years. It was a lot of life. But  19 my ex-wife and I took that job because we  20 wanted out of the city and we had just had  21 a child and they had approached me not even  22 through a head hunter, they had found me  23 somehow and made me some great promises and  24 it just sounded like too good to be true.  25 It turned out it was.</p>	<p style="text-align: right;">Page 41</p> <p>1 <b>T. Sharinn</b>  2 <b>project we'd like you to work on, or was it</b>  3 <b>hey, here are some things we're doing, we</b>  4 <b>want to get you up to speed and have you</b>  5 <b>have more of a multifaceted counseling and</b>  6 <b>working relationship?</b>  7 A. I'm smiling because nothing with  8 Steve Colvin was ever simple, and I'm sorry  9 he's passed --  10 <b>Q. We all are.</b>  11 A. -- Steve and I were very friendly  12 for a long time, including even just before  13 this began. No. For lack of a better way  14 of saying this, it was a very New York  15 relationship in that it started off with a  16 cup of coffee at NYU Medical with Alan and  17 Steve, and I think Gene Grassi was there  18 the first time, and we all just kind of  19 talked for hours, and some of it was about  20 some ideas he had and some of it was about  21 what I would do.  22 I told him at that point, I think  23 I was at Levenson, I said I'm moving on to  24 this place called Bryan Cave, and nothing  25 really formal ever grabbed.</p>

12 (Pages 42 to 45)

<p style="text-align: right;">Page 42</p> <p>1 T. Sharinn</p> <p>2 I mean, with Steve it was a lot</p> <p>3 of hurry up, slow down -- always, on every</p> <p>4 issue, a lot of helter-skelter thought</p> <p>5 patterns. He would have epiphanies in the</p> <p>6 middle of the night and call me regularly</p> <p>7 either to just kibitz for lack of a better</p> <p>8 word -- I apologize, K-I-B-I-T-Z -- or to</p> <p>9 talk business or just because he couldn't</p> <p>10 sleep, okay. That's how Steve was. You</p> <p>11 know, he had a good heart, but he also had</p> <p>12 a lot going on inside his head.</p> <p>13 <b>Q. So it was fairly comprehensive</b></p> <p>14 <b>relationship?</b></p> <p>15 A. I don't know what comprehensive</p> <p>16 means to you. To me, what it was was more</p> <p>17 than a professional relationship. And it</p> <p>18 involved more than just getting patents.</p> <p>19 It involved just kind of helping them focus</p> <p>20 their ideas a little bit.</p> <p>21 They had a lot of really smart</p> <p>22 people in a very small group collected.</p> <p>23 They were teaching at NYU Medical School --</p> <p>24 I mean, these are not dummies, these were</p> <p>25 really bright people and very talented</p>	<p style="text-align: right;">Page 44</p> <p>1 T. Sharinn</p> <p>2 It was me, it was Alan, it was Gene -- I</p> <p>3 mean, Gene was the smartest guy in the</p> <p>4 group as far as engineering goes, and then</p> <p>5 it was this other Alan, who I can't</p> <p>6 remember his last name, he wasn't a doctor,</p> <p>7 but he was an engineer and he was actually</p> <p>8 the guy really responsible for --</p> <p>9 <b>Q. Was it Katz?</b></p> <p>10 A. Katz, right. You know, I've</p> <p>11 never seen Steve make rounds, but I suspect</p> <p>12 that he probably threw it at a couple of</p> <p>13 his patients, too. I mean, Steve was just</p> <p>14 like that. He would just talk.</p> <p>15 In fact, one of the things I had</p> <p>16 always cautioned Steve was that if he</p> <p>17 discloses this publicly, and just talking</p> <p>18 about it, a third party is considered a</p> <p>19 public disclosure, that he runs the risk of</p> <p>20 losing his patent rights.</p> <p>21 <b>Q. Did you see any dividing line, if</b></p> <p>22 <b>you will, or compartmentalization between</b></p> <p>23 <b>yourself and Alan Fell in terms of your</b></p> <p>24 <b>representation, co-representation perhaps</b></p> <p>25 <b>of the Colvin group?</b></p>
<p style="text-align: right;">Page 43</p> <p>1 T. Sharinn</p> <p>2 surgeons, and they just had great ideas,</p> <p>3 they didn't know what to do with them.</p> <p>4 So we would sit down and we would</p> <p>5 talk about it and what we could do with</p> <p>6 them, what made sense, what didn't make</p> <p>7 sense.</p> <p>8 <b>Q. And how --</b></p> <p>9 A. Just so we're clear, because you</p> <p>10 had asked me earlier, for the applications</p> <p>11 that I filed, there were probably 10 for</p> <p>12 each one that I absolutely refused to</p> <p>13 engage in.</p> <p>14 <b>Q. Iterations of a particular --</b></p> <p>15 A. Just various things. I mean,</p> <p>16 sometimes it wasn't surgically related. I</p> <p>17 mean, Steve would call me up sometimes with</p> <p>18 ideas that I can't even begin to guess</p> <p>19 anymore right now because it got to the</p> <p>20 point where you just listened, took notes,</p> <p>21 thought about it and then got back to him.</p> <p>22 <b>Q. So essentially he used you as a</b></p> <p>23 <b>sounding board to vet his ideas as to</b></p> <p>24 <b>whether there was something there --</b></p> <p>25 A. Not just me. I was one of many.</p>	<p style="text-align: right;">Page 45</p> <p>1 T. Sharinn</p> <p>2 A. Yeah, very strong divided line.</p> <p>3 <b>Q. And can you describe that for me?</b></p> <p>4 A. Yeah. I mean, Alan made it clear</p> <p>5 to me that they're his client, I'm just</p> <p>6 providing the service he can't. He was</p> <p>7 very territorial.</p> <p>8 <b>Q. So Alan Fell would have been the</b></p> <p>9 <b>general counsel, the in-house counsel, if</b></p> <p>10 <b>you will, of the group and you were the</b></p> <p>11 <b>intellectual property provider/vendor, if</b></p> <p>12 <b>you will?</b></p> <p>13 A. I think that's one way of putting</p> <p>14 it.</p> <p>15 <b>Q. You know, I'm not trying to be</b></p> <p>16 <b>pejorative. I'm just trying to get a sense</b></p> <p>17 <b>of the dynamic.</b></p> <p>18 A. You know, let me just say this.</p> <p>19 I don't know if you're being pejorative or</p> <p>20 not, it doesn't really matter, I just want</p> <p>21 to give you the answers, and it's fine, you</p> <p>22 just ask me the questions the way you feel.</p> <p>23 If I don't understand it, I'll ask you to</p> <p>24 explain it.</p> <p>25 <b>Q. All right.</b></p>

13 (Pages 46 to 49)

<p style="text-align: right;">Page 46</p> <p>1 <b>T. Sharinn</b>  2 <b>Was the Quickie group just one</b>  3 <b>amorphous client matter for you at Pepe &amp;</b>  4 <b>Hazard, or did you divide it up into</b>  5 <b>different billing matters?</b>  6 A. That's an excellent question and  7 I'm still not sure I know the answer to it.  8 They -- I tried. I honestly  9 tried. I would say -- because Alan Fell  10 tried, also. Alan would say look, you need  11 to send me separate bills for the different  12 things.  13 And you know, law firms are good  14 at a lot of things, but maybe they're not  15 so good at their accounting always, and so  16 a lot of times some things would go on one  17 bill that should be on another and vice  18 versa.  19 And I don't think Pepe or  20 Greenberg or any of those firms are an  21 exception to that rule.  22 That said, on top of that, to  23 make things further complicated, you know,  24 again, Colvin and even Fell and Grassi  25 would in midstream switch subjects.</p>	<p style="text-align: right;">Page 48</p> <p>1 T. Sharinn  2 really was more of a very separate entity.  3 He did that and he had a charitable  4 organization also where they were trying to  5 provide surgical assistance to the  6 underprivileged in third world nations.  7 I don't recall what that one was  8 called. But both of those were with  9 someone who is now, if I'm not mistaken,  10 either had a stroke or also passed away or  11 both, I don't remember his name, who was an  12 employee of Colvin's at the hospital, but  13 he wasn't a doctor either. He really  14 handled that.  15 So those were actually pretty  16 separate matters, and I dealt with either  17 Steve or to a small degree Alan on those or  18 this other person and his assistant.  19 <b>Q. All right.</b>  20 <b>So but as far as surgical</b>  21 <b>procedures and the inventions or ideas</b>  22 <b>associated with them, pretty much a lot of</b>  23 <b>spillover from one to the next?</b>  24 A. Yeah. I mean, I hate to say it,  25 but they were characters. Woody Allen</p>
<p style="text-align: right;">Page 47</p> <p>1 T. Sharinn  2 So we could be talking about the  3 Quickie patent, and in midstream I can hear  4 about all of a sudden, well, we're going to  5 be giving you this other work, or what do  6 you think about this, or can you believe  7 the Yankees blew it last night -- it could  8 be any of those, and then still other  9 things.  10 And then to make it still further  11 complicated, I could send a bill to Quickie  12 and get a check from S&amp;A rings.  13 <b>Q. Is it fair to say then that as</b>  14 <b>far as the intellectual property interests</b>  15 <b>of the Quickie group, nothing was really</b>  16 <b>off the table?</b>  17 A. I don't know what that means.  18 <b>Q. Well, I'm just trying to</b>  19 <b>characterize, and admittedly, so your</b>  20 <b>statement that anything could come up in</b>  21 <b>the course of the conversation from S&amp;A</b>  22 <b>rings to the '160 Patent to the Liberty</b>  23 <b>Wellness center at any point in time and</b>  24 <b>there was no real dissection?</b>  25 A. The Liberty Wellness Center</p>	<p style="text-align: right;">Page 49</p> <p>1 T. Sharinn  2 would have had a tough time creating people  3 with more personality.  4 <b>Q. Was there anybody apart from you,</b>  5 <b>to your understanding, that was guiding</b>  6 <b>them as you indicated in terms of their</b>  7 <b>intellectual or focusing their intellectual</b>  8 <b>property interests?</b>  9 A. Say this again.  10 <b>Q. Was there anybody else besides</b>  11 <b>you, to your understanding, that was</b>  12 <b>guiding or focusing them with regards to</b>  13 <b>their intellectual property interests?</b>  14 A. Well, I mean, without sounding  15 paranoid, Steve probably spoke to several  16 people on a regular basis because Steve  17 never took anything at face value.  18 So yes or no never meant yes or  19 no to Steve. It just meant we'll talk  20 about it later if it wasn't the position he  21 wanted to take. So we need to understand  22 that as a baseline.  23 I know on a couple of occasions  24 he had spoken to other counsel only because  25 he would say things to me sometimes to get</p>



14 (Pages 50 to 53)

<p style="text-align: right;">Page 50</p> <p>1 T. Sharinn</p> <p>2 my goat or other times just to draw out a</p> <p>3 conversation.</p> <p>4 And I know at the end Mark Evens</p> <p>5 was very, very heavily involved, you</p> <p>6 know -- but yeah, other than that, I'm not</p> <p>7 really sure.</p> <p>8 <b>Q. What did you understand Mark</b></p> <p>9 <b>Evens' involvement to be?</b></p> <p>10 A. Well, let me make one request,</p> <p>11 after we're done with this line, can I</p> <p>12 please go to the bathroom?</p> <p>13 <b>Q. Well, we can --</b></p> <p>14 A. No, I'll finish your question</p> <p>15 first. I'm just asking the next few</p> <p>16 minutes.</p> <p>17 With Mark Evens, it's hard to</p> <p>18 explain what he is, and I don't want to be</p> <p>19 insulting, but saying that alone I am,</p> <p>20 okay -- your pejorative phrase. He was an</p> <p>21 interesting guy. He had applied for</p> <p>22 partnership at Greenberg Traurig while he</p> <p>23 was at Thelen Reid.</p> <p>24 I know Paul knew him from back at</p> <p>25 Thelen Reid. I know that he had listed</p>	<p style="text-align: right;">Page 52</p> <p>1 T. Sharinn</p> <p>2 have ever dealt with in a professional</p> <p>3 capacity.</p> <p>4 <b>Q. Any capacity or just patent</b></p> <p>5 <b>related?</b></p> <p>6 A. Any.</p> <p>7 <b>Q. Okay.</b></p> <p>8 A. I never met anybody who knew less</p> <p>9 about the law they professed to have an</p> <p>10 expertise in.</p> <p>11 <b>Q. Well, those are pretty strong</b></p> <p>12 <b>remarks.</b></p> <p>13 A. Feel free to share it with him.</p> <p>14 MR. SCOTT: All right. Go ahead</p> <p>15 and take that break.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 (Recess taken from 10:21 a.m. to</p> <p>18 10:28 a.m.)</p> <p>19 BY MR. SCOTT:</p> <p>20 <b>Q. Having just talked about the</b></p> <p>21 <b>somewhat chaotic nature of the ideas and</b></p> <p>22 <b>the inventions that are brought up in the</b></p> <p>23 <b>course of your relationship with the Colvin</b></p> <p>24 <b>group, how do you recall trying to</b></p> <p>25 <b>rationalize or make sense of the different</b></p>
<p style="text-align: right;">Page 51</p> <p>1 T. Sharinn</p> <p>2 Quickie and some other of these cases and</p> <p>3 their value at much higher than what they</p> <p>4 were when he applied for Greenberg. It</p> <p>5 came up on a conflict report and they</p> <p>6 brought it to my attention that he was</p> <p>7 claiming to have been handling them -- that</p> <p>8 was the first I had learned of him. I had</p> <p>9 never met him at this point.</p> <p>10 And what I had said to Greenberg</p> <p>11 at that point from what I can remember,</p> <p>12 what I always say about things like that, I</p> <p>13 don't know. If he is, he is. It's news to</p> <p>14 me. I had never spoken to him.</p> <p>15 Later on when I got to meet him,</p> <p>16 you know, he's a nice enough guy, but I</p> <p>17 don't think he was a patent attorney,</p> <p>18 although I know he professed to be.</p> <p>19 <b>Q. Why do you say that you don't</b></p> <p>20 <b>think he was a patent attorney, because he</b></p> <p>21 <b>wasn't licensed before the Patent Office?</b></p> <p>22 A. No, I guess I'm under oath here,</p> <p>23 because he was clueless. Okay. He was</p> <p>24 probably in 17 years now since law school</p> <p>25 the most underwhelming individual that I</p>	<p style="text-align: right;">Page 53</p> <p>1 T. Sharinn</p> <p>2 <b>billing matters, to the best of your</b></p> <p>3 <b>recollection?</b></p> <p>4 A. You know, I would enter my time</p> <p>5 regularly and I would look at my pre-bills</p> <p>6 most of the time, pretty quickly though,</p> <p>7 and I would basically not -- it's funny,</p> <p>8 there are some clients I was very, very</p> <p>9 concerned about making sure the billable</p> <p>10 items fell into the correct matter.</p> <p>11 With them I didn't worry about it</p> <p>12 as much because they didn't worry about it</p> <p>13 that much. So I just made sure that the</p> <p>14 numbers were right, that nobody was</p> <p>15 overbilling them, that the value made sense</p> <p>16 for what the job that was done, and I</p> <p>17 looked at the entries to make sure that the</p> <p>18 entries made sense. But a lot of times I</p> <p>19 wouldn't look at the bills as closely as I</p> <p>20 probably should have.</p> <p>21 <b>Q. Let me just jump ahead and see if</b></p> <p>22 <b>I can help us out.</b></p> <p>23 A. Sure, okay.</p> <p>24 MR. SCOTT: We'll mark this as</p> <p>25 Exhibit 34.</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 54</p> <p>1 T. Sharinn 2 (Exhibit 34, Letter dated 5/4/01, 3 marked for Identification, as of this 4 date.) 5 BY MR. SCOTT: 6 <b>Q. On the second page you'll see</b> 7 <b>some different files, if you will, that are</b> 8 <b>to be transferred or not transferred.</b> 9 <b>This is a May 4, 2001 letter from</b> 10 <b>one of your former colleagues at Pepe &amp;</b> 11 <b>Hazard to Alan Fell in connection with your</b> 12 <b>prospective departure from Pepe to</b> 13 <b>someplace else.</b> 14 A. Right. I didn't -- I'm very 15 funny -- it's not funny, but it's just the 16 way I do things -- when I've left jobs in 17 the past, until I was walking out the door, 18 I never told anybody where I was going 19 unless I felt it was appropriate. I never 20 felt it was their business. I look at them 21 as my past, not my future. 22 <b>Q. So they didn't know you were</b> 23 <b>going to Greenberg?</b> 24 A. I didn't tell them anything other 25 than I was going to be leaving, and then</p>	<p style="text-align: right;">Page 56</p> <p>1 T. Sharinn 2 don't remember offhand. 3 I remember this, that as an 4 associate I always was treated differently 5 because I always had some origination of my 6 own, and it wasn't just from them, I had 7 other clients, but it was never enough to 8 be treated really different, like to be put 9 into the realm of we've got to make this 10 guy a partner sooner than later. 11 <b>Q. But this is a tidy book of</b> 12 <b>business on a pretty --</b> 13 A. Again, as I'm reflecting on it, I 14 think it's probably lower than that. I 15 think probably realistically that was my 16 whole book of business, with other clients 17 too, I was thinking maybe like 75, 80, now 18 that I'm looking about it a little more. I 19 don't know offhand. 20 <b>Q. So they don't want it to go, of</b> 21 <b>course. You're expecting it to go with</b> 22 <b>you, right?</b> 23 A. That was the indication I had 24 gotten when I had spoken to Steve and Alan. 25 <b>Q. And in fact, Quickie has followed</b></p>
<p style="text-align: right;">Page 55</p> <p>1 T. Sharinn 2 when it was time to go, I gave them my 3 address as to where they should mail the 4 stuff. 5 <b>Q. In this particular instance, Mr.</b> 6 <b>Urbanik is writing to Alan on behalf of</b> 7 <b>Pepe &amp; Hazard to basically say do you want</b> 8 <b>the files to stay here or do you want them</b> 9 <b>to go with Todd Sharinn?</b> 10 A. They didn't want it to go, 11 obviously. I mean, they're a law firm. 12 <b>Q. At this time frame, do you have</b> 13 <b>any general recollection as to the amount</b> 14 <b>of annualized income that's coming off of</b> 15 <b>the Quickie group, if you will?</b> 16 A. At the time it seemed like a lot. 17 In retrospect, it was very, very little. 18 <b>Q. Any kind of numbers that go with</b> 19 <b>that?</b> 20 A. I would say probably 115, maybe 21 100 at the most. 22 <b>Q. Well, that was worth a lot more</b> 23 <b>than it is now?</b> 24 A. Yeah, I'm saying at the most. It 25 was really -- maybe even less than that. I</p>	<p style="text-align: right;">Page 57</p> <p>1 T. Sharinn 2 <b>you consistently from wherever you were</b> 3 <b>before Pepe, to Pepe, from Pepe to</b> 4 <b>Greenberg, and from Greenberg to Baker</b> 5 <b>McKenzie?</b> 6 A. Not to Baker. 7 <b>Q. No?</b> 8 A. No, sir. Not that I'm aware of. 9 I don't think I did a thing for them when I 10 was at Baker. I signed the affidavit in a 11 personal regard. The firm didn't want me 12 to handle that as part of their firm. 13 <b>Q. Do you recall Alan Fell</b> 14 <b>instructing Greenberg to transfer all files</b> 15 <b>to Baker McKenzie on your behalf?</b> 16 A. I really don't recall that, no. 17 (Exhibit 35, Letter dated 18 10/3/05, marked for identification, as 19 of this date.) 20 BY MR. SCOTT: 21 <b>Q. This is an October 3, 2005 letter</b> 22 <b>from Alan Fell of Rick Steiner to Greenberg</b> 23 <b>Traurig. I'll give you a chance to look at</b> 24 <b>that.</b> 25 A. Okay. I see the letter. I don't</p>



16 (Pages 58 to 61)

<p style="text-align: right;">Page 58</p> <p>1 T. Sharinn 2 recall it. I think by that time my 3 involvement with them was zilch, as far as 4 I recall. 5 <b>Q. This letter, just for the record,</b> 6 <b>does reflect that Mr. Fell was asking</b> 7 <b>Greenberg Traurig to transfer all of the</b> 8 <b>files for Quickie to Baker McKenzie which</b> 9 <b>is where you were going, right?</b> 10 A. That's what the letter says, yes, 11 sir. 12 <b>Q. Do you recall, and I'm not sure I</b> 13 <b>understood your testimony a moment ago, do</b> 14 <b>you recall that Baker McKenzie did not want</b> 15 <b>you to represent Quickie, is that what you</b> 16 <b>were saying?</b> 17 A. No. I said that the affidavit 18 that I was asked to sign by Mr. Maier, I 19 think you said his name was -- 20 <b>Q. Yes.</b> 21 A. -- they didn't want me to sign it 22 as an attorney for Baker McKenzie. So I 23 signed it in my individual capacity. 24 <b>Q. I take it that you don't recall</b> 25 <b>opening any matters on behalf of Quickie or</b></p>	<p style="text-align: right;">Page 60</p> <p>1 T. Sharinn 2 recollection at all of handling work for 3 them at that point. 4 <b>Q. Is it possible that in your</b> 5 <b>effort to really just start afresh not</b> 6 <b>something that you picked up on and tried</b> 7 <b>to cultivate as a transferring file to</b> 8 <b>Baker McKenzie?</b> 9 A. Like said, this is the first I 10 can recall seeing this letter. I'm not 11 even sure that Greenberg ever even showed 12 me this letter. 13 They must have, because that 14 would be their obligation, and Jerry 15 Goldberg is a very honest lawyer as far as 16 I know. So I would assume that he did show 17 me the letter, but I don't recall seeing it 18 and I don't recall taking their files with 19 me, I'm sorry. 20 <b>Q. You said that the relationship</b> 21 <b>had chilled.</b> 22 <b>Can you tell me when that came</b> 23 <b>about?</b> 24 A. They had caused, you know, some 25 problems. They didn't pay bills and they</p>
<p style="text-align: right;">Page 59</p> <p>1 T. Sharinn 2 <b>in connection with Quickie while at Baker</b> 3 <b>McKenzie?</b> 4 A. I have no recollection of that at 5 all. Again, like I said, I don't even 6 recall doing work for Quickie in my final 7 year at Greenberg Traurig. 8 <b>Q. Do you recall Greenberg Traurig</b> 9 <b>refusing to abide Mr. Fell's wishes and not</b> 10 <b>send files to your attention?</b> 11 A. I don't. 12 Let me explain something, if I 13 could. 14 <b>Q. Okay.</b> 15 A. At that time in my life I had 16 just left my ex-wife around the time when I 17 was switching firms, and really, I was just 18 focusing on starting fresh at Baker and -- 19 I always looked at, just so you understand, 20 I always looked at Dr. Colvin and his crew 21 as friends as much as clients, and the 22 relationships chilled quite a bit by that 23 point. 24 So it's nice to read this, that 25 he followed me there, too, but I have no</p>	<p style="text-align: right;">Page 61</p> <p>1 T. Sharinn 2 were, you know -- Steve -- I don't know how 3 to put this, but Steve was pretty obnoxious 4 to a couple of my assistants and to some 5 paralegals on a regular basis and I didn't 6 like it. 7 I guess maybe part of it was my 8 own maturation as not just an attorney but 9 as an individual. Like I said, I had just 10 left my wife, I never expected to do that, 11 but I kind of decided that I was not 12 willing to compromise in certain regards, 13 and one of them was I didn't want to work 14 with people who were overtly rude to people 15 who worked with me, or to me. And at times 16 they could be, you know, somewhat rude. 17 <b>Q. Is it possible then that, whether</b> 18 <b>you saw this or not, you simply did not</b> 19 <b>want to have a continuing relationship with</b> 20 <b>the Quickie group going forward at Baker</b> 21 <b>McKenzie?</b> 22 A. Anything is possible. Again, 23 like I said, this is unfortunately, you're 24 asking me to give you answers that I have 25 no basis to give them. So I mean, if you</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 62</p> <p>1 T. Sharinn</p> <p>2 want me to speculate, I'll speculate.</p> <p>3 <b>Q. No, I don't want you to</b></p> <p>4 <b>speculate.</b></p> <p>5 A. Okay. I'm trying to work with</p> <p>6 you on this. I just don't know myself.</p> <p>7 <b>Q. I'm just trying to get a sense,</b></p> <p>8 <b>Mr. Sharinn, as to whether you can recall</b></p> <p>9 <b>having seen this now and whether it</b></p> <p>10 <b>refreshes your recollection as to having</b></p> <p>11 <b>perhaps an attitude in October of 2005, you</b></p> <p>12 <b>know what, I'd rather just start fresh and</b></p> <p>13 <b>not have any strings coming over with</b></p> <p>14 <b>regards to the Quickie group.</b></p> <p>15 A. I don't have any specific</p> <p>16 recollection.</p> <p>17 <b>Q. Fair enough.</b></p> <p>18 A. So I can't really say. It could</p> <p>19 be what happened. It could also be</p> <p>20 something completely different. I don't</p> <p>21 know. Did they ever get any bills for me</p> <p>22 at Baker McKenzie?</p> <p>23 <b>Q. I don't know, because I've never</b></p> <p>24 <b>seen anything from Baker McKenzie.</b></p> <p>25 A. They would have had the bills.</p>	<p style="text-align: right;">Page 64</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>responsibility for your files in the</b></p> <p>3 <b>above-captioned matters."</b></p> <p>4 <b>The matters are reflected on the</b></p> <p>5 <b>second page, right, the different matters?</b></p> <p>6 A. You know, I guess, again, this is</p> <p>7 one of those situations where I have to say</p> <p>8 I do recall each of those matters, with the</p> <p>9 exception of General Corp. So yeah, I</p> <p>10 would assume those are the matters. There</p> <p>11 might have been others that I'm not aware</p> <p>12 of.</p> <p>13 <b>Q. And you took, you'll agree with</b></p> <p>14 <b>me that in taking those matters to</b></p> <p>15 <b>Greenberg Traurig, you took the</b></p> <p>16 <b>responsibilities associated with those</b></p> <p>17 <b>matters to Greenberg Traurig, correct?</b></p> <p>18 MR. KAMINSKY: Objection to the</p> <p>19 form of the question.</p> <p>20 A. I'm not sure I understood that,</p> <p>21 to be honest with you. Would you mind</p> <p>22 rephrasing it?</p> <p>23 <b>Q. Yeah, let me try.</b></p> <p>24 A. Sure.</p> <p>25 <b>Q. This reflects that the</b></p>
<p style="text-align: right;">Page 63</p> <p>1 T. Sharinn</p> <p>2 <b>Q. Yeah, but we just haven't</b></p> <p>3 <b>received any discovery from them.</b></p> <p>4 A. I'm not saying Baker. I'm saying</p> <p>5 Quickie. Wouldn't they have it at Baker</p> <p>6 McKenzie if they had gotten them?</p> <p>7 <b>Q. That's possible, yeah. I haven't</b></p> <p>8 <b>seen any, put it that way.</b></p> <p>9 A. Okay. I don't know.</p> <p>10 <b>Q. They just haven't been brought to</b></p> <p>11 <b>my attention.</b></p> <p>12 A. If I were a fly on the wall, ask</p> <p>13 my opinion, it would sound to me like we</p> <p>14 went our own ways.</p> <p>15 <b>Q. And that's what it seems.</b></p> <p>16 <b>I'm going to go back to Exhibit</b></p> <p>17 <b>34 for a second.</b></p> <p>18 A. You still want me to look at page</p> <p>19 2?</p> <p>20 <b>Q. I'm going to go there, but I'm</b></p> <p>21 <b>going to ask a couple of questions about</b></p> <p>22 <b>page 1.</b></p> <p>23 A. Sure.</p> <p>24 <b>Q. The second paragraph, "His</b></p> <p>25 <b>departure, however, raises the question of</b></p>	<p style="text-align: right;">Page 65</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>responsibility for those files is going to</b></p> <p>3 <b>go with you to wherever you go, correct?</b></p> <p>4 A. You know, I think more than</p> <p>5 anything, for lack of a better term, this</p> <p>6 is Pepe &amp; Hazard's way of saying we'd like</p> <p>7 to do the work if you're willing to give it</p> <p>8 to us. Otherwise, we want to make sure</p> <p>9 we're off the hook for any responsibility.</p> <p>10 I'm not sure it's saying anybody</p> <p>11 else is taking responsibility, just that</p> <p>12 they're not.</p> <p>13 <b>Q. The question that I have then for</b></p> <p>14 <b>you is: In entering Greenberg Traurig, did</b></p> <p>15 <b>they understand that you were coming to</b></p> <p>16 <b>them with these matters and</b></p> <p>17 <b>responsibilities for these matters?</b></p> <p>18 A. I can't speak for what Greenberg</p> <p>19 Traurig understood. My understanding would</p> <p>20 have been that, yes, they were aware I was</p> <p>21 bringing work with me.</p> <p>22 <b>Q. Let me ask you more specifically,</b></p> <p>23 <b>do you recall advising or informing</b></p> <p>24 <b>Greenberg Traurig that these are matters</b></p> <p>25 <b>that I'm bringing with me to Greenberg</b></p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 66</p> <p>1 <b>T. Sharinn</b>  2 <b>Traurig that I will have continuing</b>  3 <b>responsibility for?</b>  4 A. I understand your question now.  5 Thanks.  6 I guess the way I would put this  7 is Greenberg Traurig is one of the most  8 organized firms I've ever worked for, even  9 though their billing may not be great, but  10 that's a different story, and like I said,  11 I can't see many law firms where the  12 accounting is great, but they are very  13 organized.  14 I don't have a specific  15 recollection of discussing these particular  16 matters with them.  17 I do recall prior to being  18 engaged in employment by Greenberg Traurig  19 that I would have had to go through a  20 conflicts issue.  21 <b>Q. That's what I was going to ask</b>  22 <b>next.</b>  23 A. So my guess is: They would have  24 asked me at that time could you list as  25 many of the matters that you are aware of</p>	<p style="text-align: right;">Page 68</p> <p>1 T. Sharinn  2 pose more to Greenberg Traurig than me  3 because I don't really know what their  4 process was.  5 <b>Q. It's one of those mysteries of</b>  6 <b>life.</b>  7 A. Well, you know, I guess if you've  8 been around long enough, and you say you  9 have, and travel to enough firms, which you  10 say you did, you know that every firm has  11 their own way of doing things, and we as  12 junior individuals don't always know  13 exactly what their things are.  14 <b>Q. Right. Fair enough.</b>  15 <b>Now, I want to try and --</b>  16 <b>obviously at Pepe &amp; Hazard you brought this</b>  17 <b>Quickie client or Quickie group into at</b>  18 <b>least these different categories, correct?</b>  19 A. No, not correct, That's why I'm  20 saying I recognize specifically.  21 By the time I was at Greenberg  22 Traurig, the Ethicon and the U.S. surgical  23 matters would have been dead. They may  24 have asked us to transfer the files, but  25 those matters were dead.</p>
<p style="text-align: right;">Page 67</p> <p>1 T. Sharinn  2 for us so that we can run a conflict on it.  3 I mean, that's how we learned  4 about Mark Evens, or how I learned about  5 Mark, the first time was the same process.  6 <b>Q. Not when you were entering</b>  7 <b>Greenberg, but --</b>  8 A. No -- well, he was trying to  9 enter Greenberg.  10 <b>Q. Enter, right.</b>  11 <b>After you were already there?</b>  12 A. I had been there, I think at that  13 point, about a year and a half.  14 <b>Q. And I assume, just given the</b>  15 <b>nature of how law firms work, not only are</b>  16 <b>they looking at a conflicts situation here,</b>  17 <b>but they're asking you what portable</b>  18 <b>business are you potentially bringing to</b>  19 <b>us, right?</b>  20 A. I'm sure that was part of the  21 equation when they brought their offer to  22 me.  23 <b>Q. And we're going to look at --</b>  24 A. Again, just so we're clear,  25 that's the kind of question you have to</p>	<p style="text-align: right;">Page 69</p> <p>1 T. Sharinn  2 <b>Q. And what are those, is that the</b>  3 <b>licensing negotiations?</b>  4 A. They were negotiations, right, to  5 try and get a licensed deal for Quickie  6 because Medtronic, while they were -- I  7 guess we'll talk about that obviously --  8 while they were expressing some interest in  9 the technology, weren't being particularly  10 overly interested, and so Steve wanted to  11 go out and build a sense of urgency and  12 necessity.  13 <b>Q. So he has this idea, and is it</b>  14 <b>just the '160 Patent that he's trying to</b>  15 <b>shop to Ethicon U.S. surgical or Medtronic,</b>  16 <b>or is there other stuff as well?</b>  17 A. No, just the 160, as I recall.  18 <b>Q. So the 160, you get it patented</b>  19 <b>while you're at Pepe &amp; Hazard, right?</b>  20 A. I did, yes.  21 <b>Q. Applied for in 1998, issued in</b>  22 <b>May of 2000, does that jive with your</b>  23 <b>recollection?</b>  24 A. Sounds about right.  25 <b>Q. So it's prior to you going over</b></p>

19 (Pages 70 to 73)

<p style="text-align: right;">Page 70</p> <p>1 <b>T. Sharinn</b>  2 <b>to Greenberg Traurig --</b>  3 A. Right.  4 <b>Q. -- that it issues?</b>  5 A. Right.  6 The other matter, this General  7 Corp, I have no recollection at all of what  8 that is.  9 <b>Q. All right.</b>  10 <b>I just want to come back to -- so</b>  11 <b>were there negotiations with Ethicon U.S.</b>  12 <b>Surgical and Medtronic prior to the</b>  13 <b>issuance of the '160 Patent or only after?</b>  14 A. Prior.  15 <b>Q. Prior.</b>  16 A. There were no -- we should  17 understand something, there were no real  18 negotiations. There was a non-disclosure  19 agreement/non-compete agreement that I  20 negotiated with each of those specific  21 companies that were entered into by both  22 those companies.  23 <b>Q. Just so you can look?</b>  24 A. So look and talk, because the  25 application was still pending.</p>	<p style="text-align: right;">Page 72</p> <p>1 T. Sharinn  2 ongoing, even when I was at Pepe &amp; Hazard.  3 I think the agreement actually was entered  4 into at Pepe &amp; Hazard, and I also think  5 shortly after the agreement was entered  6 into that Medtronic was already trying to  7 break the agreement.  8 <b>Q. All right.</b>  9 <b>But you do recall that there was</b>  10 <b>a license and development agreement that</b>  11 <b>was executed in connection with Medtronic?</b>  12 A. Oh, sure, absolutely.  13 <b>Q. While we're at it, let's go</b>  14 <b>ahead -- Exhibit 21, which was marked</b>  15 <b>yesterday --</b>  16 A. Do I need this document any  17 longer?  18 <b>Q. Yeah, for a second.</b>  19 A. Okay, then I'll hold onto it.  20 I've got it. Is this what you're  21 looking for?  22 <b>Q. Yeah.</b>  23 A. Okay.  24 <b>Q. These are the ones that were</b>  25 <b>marked yesterday, just so you know as we go</b></p>
<p style="text-align: right;">Page 71</p> <p>1 T. Sharinn  2 Ethicon, I'm not quite sure we  3 were even on the plane back from  4 Cincinnati, it was where they were located  5 before they had said they weren't  6 interested. They couldn't have shown less  7 interest at the meeting if they tried.  8 In fact, I remember Steve was  9 very upset because the guy that was  10 supposed to meet with us didn't even come  11 to meet with us, and we ate in a cafeteria  12 which he made a comment about.  13 U.S. Surgical, they were nicer,  14 but I don't think they took even a week  15 before they started avoiding phone calls,  16 and then it ultimately took my pressing  17 their lawyer to say, guys, my guys are a  18 little anxious here to know what's going  19 on, can someone give us some information.  20 And they basically at that point said they  21 were going to punt.  22 <b>Q. All right.</b>  23 <b>Medtronic, it reflects license</b>  24 <b>agreement. There is something there?</b>  25 A. There was negotiations that were</p>	<p style="text-align: right;">Page 73</p> <p>1 <b>T. Sharinn</b>  2 <b>through the deposition.</b>  3 <b>This is a letter that you sent to</b>  4 <b>Dr. Colvin upon the issuance of the '160</b>  5 <b>Patent, correct?</b>  6 A. Probably. It looks like it is,  7 yes, sir.  8 <b>Q. Dated May 30th of 2000. You're</b>  9 <b>sending him the actual copy of the '160</b>  10 <b>Patent?</b>  11 A. It's not a copy. It's the  12 certificate of patent. The specific word  13 is called letters of patent.  14 <b>Q. Have you seen this document</b>  15 <b>before?</b>  16 A. I signed it.  17 <b>Q. Well, fair enough.</b>  18 <b>What I really meant to say --</b>  19 A. What I can tell you is I didn't  20 draft it.  21 <b>Q. Did you see it in prepping for</b>  22 <b>your deposition?</b>  23 A. Oh, no.  24 Let me ask one question, because  25 at this point if I were defending this</p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 74</p> <p>1 T. Sharinn 2 deposition, I might be concerned that we're 3 breaching attorney-client privilege. 4 But if my attorney is not upset 5 and doesn't mind me answering specific 6 questions of what we reviewed together, 7 I'll continue to do that. 8 MR. KAMINSKY: In a malpractice 9 case such as this there is no 10 attorney-client privilege as between 11 the plaintiff and the law firm. 12 That's deemed to have been waived by 13 the bringing of a malpractice case. 14 THE WITNESS: That's fine. I 15 just wanted to make sure I wasn't -- 16 MR. KAMINSKY: As to other 17 matters such as our communications 18 with you, there is an attorney-client 19 privilege. 20 THE WITNESS: Okay, thank you. I 21 just don't want to break any rules. 22 BY MR. SCOTT: 23 <b>Q. What do you recall about the</b> 24 <b>prosecution of the '160 Patent? Was it a</b> 25 <b>difficult one to prosecute, easy?</b></p>	<p style="text-align: right;">Page 76</p> <p>1 T. Sharinn 2 <b>really asking, Mr. Sharinn, is did you take</b> 3 <b>any pride in, do you recall taking any</b> 4 <b>particular pride in this patent to the</b> 5 <b>extent that it might have been the first</b> 6 <b>one where your name showed up as the</b> 7 <b>counsel of record at the Patent Office?</b> 8 A. I guess if you don't mind, and at 9 the risk of bothering everybody with who I 10 am and how I view myself, yes is the answer 11 on a short level, but for me, what I take 12 pride in is the fact that my son is a great 13 kid, I took pride in the fact that I was 14 married to an absolutely difficult lady and 15 worked really hard at trying to sustain a 16 relationship, I took pride in the fact that 17 I represented people honestly as a lawyer 18 and worked really hard to do the best job I 19 could do for people. 20 Certificates and trophies, you 21 know, I mean, like we said before, I played 22 sports at pretty high levels, I got lots of 23 certificates and trophies, they're all in 24 my younger brother's room, they never went 25 to my room once because he wasn't any good</p>
<p style="text-align: right;">Page 75</p> <p>1 T. Sharinn 2 A. No, it was the easiest patent I 3 ever prosecuted. 4 <b>Q. And why is that?</b> 5 A. The examining attorney issued all 6 claims on filing. It's almost unheard of. 7 In fact, probably nobody was more surprised 8 than me when we got that response. 9 <b>Q. This wasn't the first patent that</b> 10 <b>you had prosecuted to issuance, was it?</b> 11 A. I don't recall. 12 <b>Q. And the only reason I ask that is</b> 13 <b>because we saw that you were licensed by</b> 14 <b>the patent bar in 1998?</b> 15 A. It may have been the first one 16 where I was the primary attorney on it, but 17 I don't recall. You know, I had done a lot 18 of work for other partners at firms that I 19 was with, for instance, at Bryan Cave, I 20 worked under a couple of partners and 21 helped them with theirs, and those have 22 gone to issuance, but I'm not sure whether 23 my name would have been associated when it 24 was on the PTO of records ultimately. 25 <b>Q. Well I guess that's what I was</b></p>	<p style="text-align: right;">Page 77</p> <p>1 T. Sharinn 2 and because I never really cared. 3 I don't have a single certificate 4 hanging on my wall for any bar I've ever 5 passed, any award I've ever won. I have 6 pictures of my kid in my office. I got 7 letters in my drawer from different clients 8 I've got thanking me for being honest and 9 open and upfront with them. 10 So would I have felt good that 11 this passed muster and that we got the 12 results we got -- like I said, I was 13 shocked partly because I did not think this 14 invention rose to the level of novelty that 15 the claims I had originally drafted would 16 go through without any kind of disruption, 17 and the reason I say that is that I was 18 trained always to draft patent claims 19 broader than what you expected to be able 20 to accomplish. 21 One of the conversation that I 22 even had with Steve Colvin was, right after 23 we got this, I told him very honestly that 24 I was concerned that perhaps we should file 25 our own reissue and try and go even broader</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 78</p> <p>1 T. Sharinn</p> <p>2 to just get some kind of a reaction from</p> <p>3 the Patent and Trademark Office so in case</p> <p>4 we ever needed to litigate this, nobody</p> <p>5 would ever raise the issue that perhaps the</p> <p>6 examiner was asleep at the wheel.</p> <p>7 So to answer your question, yes,</p> <p>8 I was proud, and yes, it may very well have</p> <p>9 been the first certificate where I was the</p> <p>10 attorney. But more than anything, I was</p> <p>11 amazed because the invention, again, I do</p> <p>12 think is novel and I do think it's an</p> <p>13 invention, but I never thought it was the</p> <p>14 invention in which the examiner treated it</p> <p>15 like, and I'm giggling only because it blew</p> <p>16 me away when this happened.</p> <p>17 <b>Q. If I can probe that just a bit,</b></p> <p>18 <b>it really comes down to your belief that</b></p> <p>19 <b>you were essentially taking a boat cleat</b></p> <p>20 <b>and incorporating it into a surgical</b></p> <p>21 <b>procedure?</b></p> <p>22 A. Not into a surgical procedure --</p> <p>23 yes, there is a claim to a surgical</p> <p>24 procedure, if I remember in the original</p> <p>25 patent, but into a device that's used in a</p>	<p style="text-align: right;">Page 80</p> <p>1 T. Sharinn</p> <p>2 <b>actually do design.</b></p> <p>3 A. You're absolutely right. The</p> <p>4 question is what is it worth to somebody</p> <p>5 else and can you convince a judge or a jury</p> <p>6 that you should exclude others from being</p> <p>7 able to use it or a derivative of it.</p> <p>8 I will say this, which is maybe</p> <p>9 good or bad for your case, but when this</p> <p>10 issued the way it issued, I do recall</p> <p>11 saying to Steve it's a double-edge sword</p> <p>12 because at the same token Medtronic, who</p> <p>13 had been claiming all along that this is</p> <p>14 not very novel, I said well, you know, you</p> <p>15 can always throw to them that if the Patent</p> <p>16 and Trademark Office agreed, they would</p> <p>17 have objected in some form and rejected our</p> <p>18 claims. They didn't.</p> <p>19 <b>Q. But your concern was because it</b></p> <p>20 <b>was broad, because you had drafted --</b></p> <p>21 A. I had drafted this broader than I</p> <p>22 had thought possible. In fact, I had</p> <p>23 gotten spoken to by my supervisor because I</p> <p>24 showed it to him before I filed the claims</p> <p>25 and he expressed concern that I had gone</p>
<p style="text-align: right;">Page 79</p> <p>1 T. Sharinn</p> <p>2 surgical procedure.</p> <p>3 And understand something, I</p> <p>4 always agreed with them that it was unique</p> <p>5 what they came up with and rose to the</p> <p>6 level of passing the 101 litmus test of</p> <p>7 novelty. Never did I ever feel that it</p> <p>8 wasn't an invention.</p> <p>9 But also understand that when you</p> <p>10 call 1-800-PATENTS and tell them you just</p> <p>11 invented this cap to this bottle, they'll</p> <p>12 write you claims and they'll get you a</p> <p>13 patent, it will cost you \$20,000 in the</p> <p>14 process -- good luck at being able to</p> <p>15 market it or to defend it, and that was</p> <p>16 something I always made clear to Steve</p> <p>17 Colvin and Alan Fell.</p> <p>18 It's actually the example I</p> <p>19 always use because that was the example</p> <p>20 that was used when I was taught by the</p> <p>21 people who taught me when they tried to</p> <p>22 explain to me what exactly having a patent</p> <p>23 really means in the real world.</p> <p>24 <b>Q. Well, but there might be</b></p> <p>25 <b>something unique to the cap that you</b></p>	<p style="text-align: right;">Page 81</p> <p>1 T. Sharinn</p> <p>2 far with this, too, that I wasn't going to</p> <p>3 get them a patent without prosecution, and</p> <p>4 I had that conversation with Steve</p> <p>5 specifically.</p> <p>6 I remember this only because,</p> <p>7 again, back to Steve as an individual, no</p> <p>8 doesn't necessarily mean no. No means</p> <p>9 let's talk about it. And so Steve wanted</p> <p>10 to take the shot at this and I felt it was</p> <p>11 a worthwhile shot to take.</p> <p>12 <b>Q. Are you familiar with what the</b></p> <p>13 <b>result of the re-examination was?</b></p> <p>14 A. I'm not specifically familiar.</p> <p>15 I've been, you know, advised that it wasn't</p> <p>16 very positive to Quickie. I'm sorry to</p> <p>17 hear that.</p> <p>18 <b>Q. Are you talking about the first</b></p> <p>19 <b>office action, or are you talking about the</b></p> <p>20 <b>ultimate --</b></p> <p>21 A. I just know about the ultimate.</p> <p>22 I don't know any specifics. If I spent 30</p> <p>23 seconds talking about this, it would have</p> <p>24 been a lot.</p> <p>25 <b>Q. Then I'm not going to bother you</b></p>



22 (Pages 82 to 85)

<p style="text-align: right;">Page 82</p> <p>1 <b>T. Sharinn</b>  2 <b>with --</b>  3 A. No, no, that's fine. I mean, I'm  4 happy to say "I don't know" to a lot of  5 questions, it's okay.  6 <b>Q. You said that you didn't draft</b>  7 <b>this letter?</b>  8 A. No.  9 <b>Q. Form letter?</b>  10 A. Yeah.  11 <b>Q. Basically some paralegal in Pepe</b>  12 <b>&amp; Hazard spits out the vital statistics of</b>  13 <b>the patent and --</b>  14 A. It's a patent paralegal. You  15 know, you have a docket system wherever you  16 are, you enter the information in the  17 docket system and I would assume, I don't  18 know because I've never specifically done  19 it, you press a button and you have a  20 letter.  21 <b>Q. We saw from the previous exhibit</b>  22 <b>on the '745 Patent --</b>  23 A. The '745 Patent, I don't have  24 that handy.  25 <b>Q. Similar letter, slightly</b></p>	<p style="text-align: right;">Page 84</p> <p>1 <b>T. Sharinn</b>  2 A. Well, you have a computer system,  3 you enter the information on it and the  4 docketing system sends ticklers when things  5 are due.  6 <b>Q. And Pepe &amp; Hazard had that,</b>  7 <b>Greenberg Traurig had that, Baker McKenzie</b>  8 <b>had that?</b>  9 A. As far as I know, all three had  10 it, yeah. I can't imagine they did it the  11 old-fashioned way. I wouldn't be  12 specifically involved in something like  13 that. That would be a paralegal's job.  14 <b>Q. It's a docketing clerk?</b>  15 A. Right. Nobody including Steve  16 Colvin or any of them would want to pay my  17 hourly rate to look at a calendar.  18 <b>Q. Now, when you took the matter,</b>  19 <b>and let's just focus for now on the '160</b>  20 <b>Patent, when you took that matter, that</b>  21 <b>particular matter with you to Greenberg</b>  22 <b>Taurig --</b>  23 A. When it was sent to Greenberg  24 Taurig -- understand something, these  25 are --</p>
<p style="text-align: right;">Page 83</p> <p>1 <b>T. Sharinn</b>  2 <b>different formatting --</b>  3 A. Every firm has their own forms,  4 but yeah, that's all this is. That's the  5 same concept, you press a button basically,  6 as far as I know, a paralegal reads it to  7 make sure that substantively it makes sense  8 and everything fell in the right place, and  9 then you sign it.  10 <b>Q. I just want to draw your</b>  11 <b>attention to the last -- the second page of</b>  12 <b>Exhibit 21, and let me see --</b>  13 A. I'm sorry, I'm looking at the  14 wrong letter. Let me take a look at it.  15 Okay.  16 <b>Q. "We will notify you regarding</b>  17 <b>payment of the maintenance fees several</b>  18 <b>months before they are due."</b>  19 <b>Do you see that?</b>  20 A. Yeah, that's standard language in  21 a letter like this.  22 <b>Q. What do you mean by -- standard</b>  23 <b>language, is it also standard practice</b>  24 <b>that's what intellectual property groups</b>  25 <b>do?</b></p>	<p style="text-align: right;">Page 85</p> <p>1 T. Sharinn  2 <b>Q. The client chose to --</b>  3 A. I work for law firms, those  4 clients were the firm's clients. I managed  5 them because I originated them.  6 <b>Q. Well, that's the question that I</b>  7 <b>really want to ask you, is that an</b>  8 <b>obligation that Greenberg Traurig, to your</b>  9 <b>understanding, assumed upon the matter</b>  10 <b>being transferred to Greenberg Traurig?</b>  11 A. While the matter was at Greenberg  12 Traurig, certainly they would be  13 responsible for -- I mean, you know, when  14 you're handling a matter, you're expected  15 to be able to tell somebody something is  16 due.  17 <b>Q. And in fact, as you can see from</b>  18 <b>Exhibit 33, the letter that you sent out</b>  19 <b>under Greenberg Traurig's letterhead in</b>  20 <b>connection with the '745 Patent makes the</b>  21 <b>same sort of commitment?</b>  22 A. There is no magic here.  23 MR. KAMINSKY: Objection to the  24 form of the question.  25 MR. SCOTT: You don't like</p>

23 (Pages 86 to 89)

<p style="text-align: right;">Page 86</p> <p>1 T. Sharinn</p> <p>2 commitment?</p> <p>3 MR. KAMINSKY: As the same</p> <p>4 statement.</p> <p>5 BY MR. SCOTT:</p> <p>6 <b>Q. Makes the same statement, that's</b></p> <p>7 <b>the word I was going to use -- makes the</b></p> <p>8 <b>same statement.</b></p> <p>9 A. Let me say this, if you don't</p> <p>10 mind. Yes to your question, but let's</p> <p>11 understand something, there is no magic to</p> <p>12 this. This is a form letter. This is done</p> <p>13 with every patent that's issued everywhere.</p> <p>14 I'm sure you're going to get an</p> <p>15 expert witness to testify about that. They</p> <p>16 are not going to tell you any differently</p> <p>17 than I'm telling you. Letters are prepared</p> <p>18 by paralegals. Letters are prepared from a</p> <p>19 database. When a client is in the</p> <p>20 database, the letter gets kicked out. The</p> <p>21 client is not in the database, the letter</p> <p>22 doesn't get kicked out.</p> <p>23 It's no different than if you do</p> <p>24 a mass mailing to customers and you delete</p> <p>25 a customer from your database because they</p>	<p style="text-align: right;">Page 88</p> <p>1 T. Sharinn</p> <p>2 look at the patent, and again, this is just</p> <p>3 my recollection, I may be wrong, but my</p> <p>4 recollection is that the assignee of that</p> <p>5 patent would be S&amp;A Rings.</p> <p>6 <b>Q. All right. 51822 is Quickie,</b></p> <p>7 <b>that's the client for that. I'm going to</b></p> <p>8 <b>show you that.</b></p> <p>9 A. That's fine.</p> <p>10 <b>Q. Liberty is a different number.</b></p> <p>11 <b>S&amp;A Rings is a different number.</b></p> <p>12 A. Okay. Who is on the patent as</p> <p>13 the assignee?</p> <p>14 <b>Q. I don't know the answer to that.</b></p> <p>15 A. Okay. Why don't we take a break</p> <p>16 and you get me the patent.</p> <p>17 <b>Q. Okay, we could do that.</b></p> <p>18 A. I would not have done concentric</p> <p>19 passive knotless suture terminator for</p> <p>20 Quickie, because that is not a Quickie</p> <p>21 invention. So the fact that there is a</p> <p>22 mission statement on the client reference</p> <p>23 number I wouldn't have even picked up on</p> <p>24 because when I'm signing a letter like</p> <p>25 this, I'm looking to make sure that the</p>
<p style="text-align: right;">Page 87</p> <p>1 T. Sharinn</p> <p>2 said they either wanted to be removed from</p> <p>3 the mailing or because they're no longer a</p> <p>4 customer -- same thing.</p> <p>5 <b>Q. All right. Fair enough.</b></p> <p>6 <b>During the entire time that you</b></p> <p>7 <b>were at Greenberg Traurig, Quickie was in</b></p> <p>8 <b>fact a client of yours, a client of</b></p> <p>9 <b>Greenberg Traurig's, where you were the</b></p> <p>10 <b>responsible attorney, correct?</b></p> <p>11 A. I don't agree with that, no. I</p> <p>12 had been fired by Quickie or removed by</p> <p>13 Quickie or replaced, whatever word you'd</p> <p>14 like to use, depending on how politically</p> <p>15 correct you are -- but no, I don't agree</p> <p>16 that they were a client of mine while I was</p> <p>17 at Greenberg Traurig for the entire</p> <p>18 duration.</p> <p>19 <b>Q. Let me see if I can refine this a</b></p> <p>20 <b>little bit.</b></p> <p>21 A. Sure, be my guest.</p> <p>22 <b>Q. You continued as evidenced by</b></p> <p>23 <b>Exhibit 33 to represent Quickie?</b></p> <p>24 A. I'm sorry, let me look at 33.</p> <p>25 No, that's not Quickie. I think if you</p>	<p style="text-align: right;">Page 89</p> <p>1 T. Sharinn</p> <p>2 number of the patent is correct and that</p> <p>3 there is, you know, no typos with regards</p> <p>4 to the name of the person.</p> <p>5 Outside of that, it's a pretty</p> <p>6 pro forma thing.</p> <p>7 (Exhibit 36, Billing letter,</p> <p>8 marked for identification, as of this</p> <p>9 date.)</p> <p>10 BY MR. SCOTT:</p> <p>11 <b>Q. I'm going to hand you what we're</b></p> <p>12 <b>marking Exhibit 36 to your deposition.</b></p> <p>13 A. I'm sorry, you want me to look at</p> <p>14 this, Number 36?</p> <p>15 <b>Q. This is a billing letter dated</b></p> <p>16 <b>September 23rd of 2004 from you to Quickie,</b></p> <p>17 <b>correct?</b></p> <p>18 A. It states to Quickie, care of</p> <p>19 Rick Stelner, it says client number 51822,</p> <p>20 which you told me is a Quickie number, so</p> <p>21 yes.</p> <p>22 <b>Q. And don't take my word for it</b></p> <p>23 <b>because I'm known to be wrong, the next</b></p> <p>24 <b>page is the actual ledger, if you will, of</b></p> <p>25 <b>outstanding invoice, right?</b></p>



24 (Pages 90 to 93)

<p style="text-align: right;">Page 90</p> <p>1 <b>T. Sharinn</b></p> <p>2 A. Yeah.</p> <p>3 <b>Q. And it has outstanding invoices</b></p> <p>4 <b>as of October 7, 2004 for Quickie, LLC,</b></p> <p>5 <b>right?</b></p> <p>6 A. It does. It says that. I mean,</p> <p>7 you know, again without seeing the actual</p> <p>8 invoices, it's really hard to say what</p> <p>9 specifically. That's why I said to you the</p> <p>10 one way to know what this really refers to</p> <p>11 is to look at the actual patent and see who</p> <p>12 the assignee is.</p> <p>13 <b>Q. Well, for billing purposes at</b></p> <p>14 <b>Greenberg Traurig you are, and you will,</b></p> <p>15 <b>all I'm trying to do at this point in time</b></p> <p>16 <b>is reflect the fact that you are doing work</b></p> <p>17 <b>for Quickie as the 51822 client well into</b></p> <p>18 <b>May of '04, is that fair?</b></p> <p>19 A. No, I don't think that is fair,</p> <p>20 actually.</p> <p>21 Because, A, I don't know whether</p> <p>22 the concentric passive knotless is, in</p> <p>23 fact, a Quickie matter. B, I don't know</p> <p>24 what General would have been doing.</p> <p>25 Clearly wasn't much and it stops as the</p>	<p style="text-align: right;">Page 92</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>a minimum.</b></p> <p>3 MR. KAMINSKY: Objection to the</p> <p>4 form of the question.</p> <p>5 BY MR. SCOTT:</p> <p>6 <b>Q. Is that true?</b></p> <p>7 MR. KAMINSKY: You're referring</p> <p>8 to a letter that's written to Quickie,</p> <p>9 that's what you're referring to.</p> <p>10 BY MR. SCOTT:</p> <p>11 <b>Q. Does this letter not reflect that</b></p> <p>12 <b>Quickie was being billed by Greenberg</b></p> <p>13 <b>Traurig for work done in 2004?</b></p> <p>14 MR. KAMINSKY: Objection to the</p> <p>15 form of the question.</p> <p>16 A. You know, I guess the best I can</p> <p>17 answer on that is I don't know. I think</p> <p>18 the letter is directed to Quickie. Again,</p> <p>19 as I said, practice and my memory would be</p> <p>20 such that it would indicate that that's a</p> <p>21 mistake.</p> <p>22 I think it would probably be</p> <p>23 better to, again, like I said a moment ago,</p> <p>24 look at the patent, maybe look at the</p> <p>25 underlying invoices and see what was done.</p>
<p style="text-align: right;">Page 91</p> <p>1 T. Sharinn</p> <p>2 bill says in '03. The Quickie Medtronics</p> <p>3 stops in '03 and most of it is from '02.</p> <p>4 <b>Q. Right.</b></p> <p>5 A. And the surgical drape stops in</p> <p>6 '02, and I don't even know what that refers</p> <p>7 to specifically, so no, I can't really say</p> <p>8 with any clarity that that's the case.</p> <p>9 I think we had talked about this</p> <p>10 a little bit earlier, maybe I'm mistaken,</p> <p>11 where I said it's kind of helter-skelter</p> <p>12 with those guys, that they would write me</p> <p>13 checks from S&amp;A for things that were</p> <p>14 Quickie and vice versa, that bills on our</p> <p>15 side were sometimes mixed together, and so</p> <p>16 it's hard for me to say. That's why I'm</p> <p>17 saying why don't we look at the passive</p> <p>18 knotless suture terminator and see who that</p> <p>19 belongs to.</p> <p>20 <b>Q. And all I'm saying, Mr. Sharinn,</b></p> <p>21 <b>is that I can only go on the documents that</b></p> <p>22 <b>have been provided to me, which are the</b></p> <p>23 <b>billing records for Greenberg Traurig,</b></p> <p>24 <b>where in fact Quickie is being billed for</b></p> <p>25 <b>work done by you in the 2004 time frame at</b></p>	<p style="text-align: right;">Page 93</p> <p>1 T. Sharinn</p> <p>2 If you have those, I'm happy to</p> <p>3 take time to go through them with you.</p> <p>4 <b>Q. We're going to go through some of</b></p> <p>5 <b>those invoices, but I'm probably going to</b></p> <p>6 <b>do it after lunch when I have it organized</b></p> <p>7 <b>so we can move more quickly through that.</b></p> <p>8 A. Okay.</p> <p>9 <b>Q. Just so I understand your</b></p> <p>10 <b>testimony.</b></p> <p>11 <b>When do you believe that you</b></p> <p>12 <b>ceased to do work for Quickie?</b></p> <p>13 A. Okay. My recollection is that I</p> <p>14 no longer did any work from about, I think</p> <p>15 it was a week or so after the Markman</p> <p>16 Hearing. I was told by Alan Fell and by</p> <p>17 Steve that they wanted me to continue on</p> <p>18 S&amp;A and some other matters, but that all</p> <p>19 the Quickie matters were going to become</p> <p>20 the work of Mark Evens and Thelen Reid.</p> <p>21 <b>Q. Do you recall continuing to have</b></p> <p>22 <b>an involvement with regards to the 160</b></p> <p>23 <b>re-examination subsequent to the Markman</b></p> <p>24 <b>Hearing?</b></p> <p>25 A. I do have some recollection of</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 94</p> <p>1 T. Sharinn  2 that, but it was very sporadic and it was  3 always -- again, this was part of the  4 problem is that Steve, like I said, would  5 call me sometimes at 3 in the afternoon,  6 sometimes at 3:00 in the morning to just  7 talk about anything from boats, the  8 Yankees -- he wasn't really a Yankees,  9 Grasse would be more Yankees -- but boats  10 or his divorce at one point, at other  11 points it was his new wife, about patents,  12 about how much Thelen Reid was getting on  13 his nerves, how much they were billing him,  14 what they were doing.  15 And I would constantly tell him  16 that I was no longer engaged by him in that  17 capacity, that I felt uncomfortable talking  18 to him about it.  19 Listen, let's understand  20 something. I would have loved continue  21 doing this case for them, and in my heart I  22 think I could have won at least on the  23 liability issues. But I was replaced, and  24 I knew that, and I told him flat out I  25 would be very happy to pick up the pieces</p>	<p style="text-align: right;">Page 96</p> <p>1 T. Sharinn  2 that Steve could be a lot of different  3 things at the same time to a lot a  4 different people in the same room.  5 <b>Q. All right.</b>  6 <b>Did you understand your</b>  7 <b>responsibility with regards to the '160</b>  8 <b>Patent to cease upon your being replaced in</b>  9 <b>connection with the Medtronic litigation?</b>  10 A. Absolutely.  11 <b>Q. Now, this is a different</b>  12 <b>question. If you don't understand the</b>  13 <b>difference, just stop me.</b>  14 A. That's fine.  15 <b>Q. Did you understand your</b>  16 <b>responsibility with regards to Quickie as</b>  17 <b>their intellectual property counsel at</b>  18 <b>Greenberg Taurig to cease with your</b>  19 <b>replacement in the Medtronic litigation?</b>  20 MR. KAMINSKY: Objection to the  21 form of the question.  22 A. That's how I understood it.  23 Let's understand something. I got a call  24 at around 9:30 at night from Alan Fell. I  25 was out celebrating from a different case</p>
<p style="text-align: right;">Page 95</p> <p>1 T. Sharinn  2 where Thelen Reid had started to drop them  3 and try to fix for him what they were  4 doing, but that I was really not permitted  5 to do what he was asking me to do.  6 At one point he asked me if I  7 wanted to consult or if I would consider  8 consulting. At another point he actually  9 suggested I open a matter and be co-counsel  10 in a very undefined way. But it didn't,  11 never happen really.  12 <b>Q. Now I want to try and segregate,</b>  13 <b>if I can.</b>  14 A. Sure.  15 <b>Q. And I don't know that based on</b>  16 <b>the testimony that you can --</b>  17 A. It's hard, because again, you  18 have to understand who the people you are  19 dealing with. It sounds like you knew  20 Steve.  21 <b>Q. For a time.</b>  22 A. Well, to know Steve for any real  23 period of time and to have real involvement  24 with him, I don't think there's a person  25 who has known him that would argue with me</p>	<p style="text-align: right;">Page 97</p> <p>1 T. Sharinn  2 that we had just won, a trademark case --  3 <b>Q. By the way, I think you had</b>  4 <b>reason to celebrate with regards to the</b>  5 <b>Quickie Markman Hearing as well.</b>  6 A. Thank you. Well, you know, we  7 felt good. But I actually didn't celebrate  8 that night because I saw the writing on the  9 wall, knew where it was going.  10 One of the only times my ex-wife  11 and I had any real conversation about my  12 career was at night. I left the  13 celebration after I got that call because I  14 felt like my life at Greenberg Taurig, as  15 I understood it and how I defined it, had  16 pretty much been confirmed to go now in a  17 much different direction than I had hoped.  18 So my understanding was, yes,  19 that -- how to put this other than they had  20 just taken everything that had to do with  21 Quickie away from me.  22 <b>Q. And what I'm trying to</b>  23 <b>understand, Mr. Sharinn, is that prior to</b>  24 <b>let's just say the Markman Hearing, your</b>  25 <b>involvement with Quickie was multifaceted</b></p>

26 (Pages 98 to 101)

<p style="text-align: right;">Page 98</p> <p>1 <b>T. Sharinn</b>  2 <b>as we described in talking about Pepe &amp;</b>  3 <b>Hazard.</b>  4 <b>I can only assume, and if I'm</b>  5 <b>wrong, tell me, that it continued that way</b>  6 <b>at Greenberg Traurig, that Quickie had many</b>  7 <b>different pieces to it as evidenced by the</b>  8 <b>different billing matters while you were</b>  9 <b>initially coming into Greenberg Traurig?</b>  10 A. If you're asking me, if I  11 understand your question correctly, you're  12 saying to me when I left Pepe and went to  13 Greenberg did several Quickie matters  14 follow me, the answer would be yes.  15 If you're asking me after the  16 Markman Hearing were those Quickie matters  17 pulled from me and given to Thelen Reid &amp;  18 Priest, again, my answer would be now yes  19 to that, too.  20 No, I was told in uncertain terms  21 that my Quickie days were abruptly over.  22 MR. KAMINSKY: In certain terms  23 or in no uncertain terms?  24 THE WITNESS: In no uncertain  25 terms. Sorry.</p>	<p style="text-align: right;">Page 100</p> <p>1 <b>T. Sharinn</b>  2 <b>we're talking October of 2002 with regards</b>  3 <b>to your representation of Quickie except</b>  4 <b>the litigation and enforcement of the '160</b>  5 <b>Patent?</b>  6 A. No, that's not true. A lot of  7 things mattered.  8 Q. Well, okay, I'm being way too  9 broad if you're taking me outside of  10 Quickie.  11 As to Quickie, that the sum and  12 substance of your representation as to  13 Quickie was the enforcement of the '160  14 Patent and nothing else?  15 A. No, that's not true.  16 Q. All right.  17 So then is it fair to say that  18 you continued to have involvement with and  19 representation of Quickie after October of  20 2002 in connection with the Markman  21 Hearing?  22 A. No, it's not fair to say that.  23 My understanding was prior to the  24 Markman Hearing that I was responsible for  25 the litigation and the patent that was</p>
<p style="text-align: right;">Page 99</p> <p>1 <b>T. Sharinn</b>  2 BY MR. SCOTT:  3 Q. So you saw then at that point in  4 time, we're talking about the Markman  5 Hearing events, which is October of 2002,  6 that the sum and substance of your  7 representation with regards to Quickie  8 concerned the '160 Patent?  9 A. Say that again, please, because  10 I'm not sure I understood it.  11 Q. As of October of 2002, which is  12 when the Markman Hearing came out and you  13 went from, I think, a high point to a low  14 point very quickly, you saw the sum and  15 substance of your representation with  16 regards to Quickie to be the '160 Patent?  17 A. Forgive me for being dense, but  18 I'm not sure I'm getting it. Could you ask  19 it a different way maybe?  20 Q. Sure.  21 A. Because it sounds like it's a  22 very important question. I don't want to  23 answer without being certain.  24 Q. Well, from what I take, nothing  25 mattered from that point in time on, and</p>	<p style="text-align: right;">Page 101</p> <p>1 <b>T. Sharinn</b>  2 being litigated, the '160 Patent. I was  3 the attorney of record with the PTO for  4 that matter, and Greenberg Traurig was the  5 firm of record.  6 Subsequent to the Markman  7 Hearing, whenever the date was, whether it  8 was the next day or the day after the  9 ruling was issued, my responsibilities to  10 that patent immediately terminated by  11 actions of Steve Colvin and Alan Fell.  12 They told me flat out, transfer the files,  13 you're no longer responsible.  14 Q. And I hear you loud and clear on  15 that.  16 A. Okay.  17 Q. I'm simply asking now did you see  18 that as extending to your responsibilities  19 or relationship with Quickie as a whole?  20 A. Yes, sir.  21 Q. Separate and apart from just the  22 '160 Patent?  23 A. I don't know that there was  24 anything else for Quickie other than the  25 '160 Patent and the litigation or defense</p>

27 (Pages 102 to 105)

<p style="text-align: right;">Page 102</p> <p>1 T. Sharinn 2 of it. Understand at the time of the 3 Markman, there was no challenge made to the 4 validity of that patent or the breath of 5 those claims. 6 Understand that from what I 7 recall subsequent to the Markman, McDermott 8 Will &amp; Emery on behalf of Medtronic filed a 9 stay in the case, it's easy to be a Monday 10 morning quarterback. If I was still there, 11 I would never have allowed it to occurred 12 without some kind of a real hearing, okay. 13 Thelen dropped the ball there. 14 We had a judge who was very favorable to us 15 at a Markman Hearing who gave us 16 interpretations that were even broader than 17 claims that I ever expected to get. 18 I was responsible for that patent 19 as the attorney of record with the U.S. 20 PTO. From that day on, when I got fired by 21 Fell &amp; Colvin and told to transfer the 22 files to Thelen Reid &amp; Priest, they became 23 responsible. It was their issue to fight, 24 for instance, the stay that Medtronic filed 25 for, it was their issue -- you want me to</p>	<p style="text-align: right;">Page 104</p> <p>1 T. Sharinn 2 accused of me messing up where they did not 3 mess up. We didn't have the ball to run 4 with. It was taken away from us and handed 5 to a different back, to speak 6 metaphorically. 7 <b>Q. I don't want to stop you.</b> 8 A. We were pulled out of the game. 9 MR. SCOTT: I do have to object 10 and move to strike as nonresponsive 11 everything after "let's call an ace an 12 ace. 13 A. That's between you and my lawyer. 14 MR. KAMINSKY: I'll, of course, 15 reserve debates on things like that 16 for later. 17 BY MR. SCOTT: 18 <b>Q. I'm not trying to quibble with</b> 19 <b>you on the '160 Patent and the</b> 20 <b>responsibility for the '160 Patent at</b> 21 <b>Greenberg Traurig or anywhere else.</b> 22 <b>What I'm trying to -- at this</b> 23 <b>point, and I'm not saying that I'm not</b> 24 <b>quibbling, I'm just not at this point --</b> 25 <b>all I'm trying to get an understanding of</b></p>
<p style="text-align: right;">Page 103</p> <p>1 T. Sharinn 2 answer, you've got to let me finish, 3 please -- 4 <b>Q. I am.</b> 5 A. Because it looks like you're 6 about to interrupt me. 7 <b>Q. No, I'm not.</b> 8 A. It was their issue to fight 9 against the re-examination, and they took 10 steps to do all of the above, they just 11 didn't do it very well, and that's why 12 we're all here today. 13 I mean, let's call an ace an ace. 14 This is sour grapes and an opportunity to 15 try and reclaim at the sweat of someone 16 else, someone else's mistake, okay. Thelen 17 Reid and Colvin and Company made a couple 18 of really big mistakes, and because of that 19 we're here today and now trying to hang the 20 blame on someone else who had nothing to do 21 with this. 22 So if I seem a bit upset about 23 it, it's because I've been accused of 24 messing up where I did not mess up and I'm 25 being accused, my former firm is being</p>	<p style="text-align: right;">Page 105</p> <p>1 T. Sharinn 2 <b>is separate and apart from the '160 Patent</b> 3 <b>enforcement or defense in the</b> 4 <b>re-examination, did you see yourself as</b> 5 <b>having a continuing relationship with</b> 6 <b>Quickie in any other respect once you got</b> 7 <b>that call following the Markman Hearing?</b> 8 A. No. 9 <b>Q. Fair enough.</b> 10 A. And just to add to that, I do not 11 recall there being any other matters 12 besides the litigation or the actual 13 Quickie patents management at that time 14 that were active. 15 <b>Q. All right.</b> 16 <b>And let me just try and step</b> 17 <b>through those hoops now.</b> 18 <b>There was a re-examination, there</b> 19 <b>was a re-examination matter opened at</b> 20 <b>Greenberg Traurig for the Quickie '160</b> 21 <b>Patent.</b> 22 A. Okay. 23 MR. KAMINSKY: Objection to the 24 form of the question. 25 <b>Q. And it's the point 0109 matter</b></p>

28 (Pages 106 to 109)

<p style="text-align: right;">Page 106</p> <p>1 <b>T. Sharinn</b>  2 <b>that is billed to for re-examination</b>  3 <b>purposes. So you had some involvement, as</b>  4 <b>I think you testified following the Markman</b>  5 <b>Hearing in connection with the</b>  6 <b>re-examination.</b>  7 A. Let me see if I can put it this  8 way. Steve Colvin became very disenchanted  9 with Thelen Reid very early on in the  10 process. Alan Fell, I'm not sure was ever  11 enchanted with them, I don't know one way  12 or the other. I only know what I remember  13 him saying to me.  14 They called me on a few occasions  15 to talk to me about what was going on in  16 the case. I obviously lent them my ear  17 because I wanted the case back, it was a  18 good case, I was really proud -- you asked  19 me before what was I proud of, I was proud  20 of the Markman results.  21 <b>Q. As you should have been.</b>  22 A. Okay, I thought we did a really  23 good job and we got a result that nobody  24 expected to get, most importantly  25 Medtronic. And if I'm not mistaken, and</p>	<p style="text-align: right;">Page 108</p> <p>1 <b>T. Sharinn</b>  2 <b>let's just take that and put it on the side</b>  3 <b>and forget about it for a moment.</b>  4 A. Okay.  5 <b>Q. Any continuing involvement you</b>  6 <b>had with the Colvin group from that point</b>  7 <b>forward, that point being October of 2002</b>  8 <b>when you got that call, you understood to</b>  9 <b>be on non-Quickie matters?</b>  10 A. Absolutely. My understanding was  11 the following, and I wasn't really proud of  12 this, but when they released me or removed  13 me from the Quickie matter and that would  14 include the patent and the litigation, I  15 think they felt badly, too.  16 Understand that Alan was at my  17 son's bris, Steve or my father had a  18 stroke, got my father moved into his  19 hospital, made sure we had all the bells  20 and whistles and the best doctors, ones we  21 couldn't even afford, they serviced my dad.  22 When my son was born, Morgan, my  23 son, my ex-wife Mandi, we had a suite, we  24 had rooms that I could never have paid for.  25 We got treatment, the head of anesthesia is</p>
<p style="text-align: right;">Page 107</p> <p>1 <b>T. Sharinn</b>  2 again, I don't remember this specifically,  3 but I thought I remembered Steve Colvin  4 getting an offer to settle after that  5 Markman that was much better than they had  6 ever gotten before.  7 As we're talking about it, that's  8 the only reason I'm saying, I remember  9 something along that, and so I felt like  10 that I did or we did as a firm a really  11 good job for them.  12 <b>Q. Oh, make no mistake. You did</b>  13 <b>that, though.</b>  14 A. Whatever.  15 <b>Q. You're the one that argued the</b>  16 <b>Markman Hearing.</b>  17 A. Remember that when the next IP360  18 article comes out. Well, it's cost me a  19 partnership in one place.  20 <b>Q. Let me see if I understand, that</b>  21 <b>you then saw any further involvement</b>  22 <b>with -- and let's separate out the '160</b>  23 <b>Patent altogether, okay?</b>  24 A. Okay.  25 <b>Q. So re-examination or litigation,</b></p>	<p style="text-align: right;">Page 109</p> <p>1 <b>T. Sharinn</b>  2 the one who gave her her epidural in the  3 middle of the night because Steve was that  4 kind of guy, Steve made sure it was going  5 to be a certain way, and I was almost  6 family, and that's kind of the way to  7 describe this.  8 I think Steve realized that when  9 I lost that case there were going to be  10 questions -- when I lost it, meaning I lost  11 responsibility for that case -- questions  12 were going to be raised inside the firm as  13 to what I did wrong.  14 Only a few people who were  15 intimately familiar with the details would  16 have ever believed that I didn't do  17 anything wrong to lose a client after, like  18 you said, I got the results that I got at  19 the Markman. Nobody gets fired after  20 hitting a grand slam, let alone a home run.  21 You just don't get that, it  22 doesn't happen. It did. So I think they  23 felt bad and let me continue on the other  24 matters which really didn't amount to very  25 much, but let me do it, and I gladly kept</p>

29 (Pages 110 to 113)

<p style="text-align: right;">Page 110</p> <p>1 T. Sharinn</p> <p>2 It because I wanted to make sure two</p> <p>3 things; number one, I had always hoped in</p> <p>4 the back of my mind and in my heart that I</p> <p>5 would get the Quickie case back.</p> <p>6 And number two, because I wanted</p> <p>7 to put forth the best foot I could forward</p> <p>8 for making partner at Greenberg Traurig,</p> <p>9 and I had been schooled enough to know that</p> <p>10 having origination was definitely a</p> <p>11 positive for making partnership.</p> <p>12 I hope that answers your</p> <p>13 question.</p> <p>14 MR. SCOTT: Are you good for</p> <p>15 another half hour?</p> <p>16 THE WITNESS: Can we take a</p> <p>17 five-second break?</p> <p>18 MR. SCOTT: Sure, let's go ahead.</p> <p>19 (Recess taken from 11:31 a.m. to</p> <p>20 11:37 a.m.)</p> <p>21 BY MR. SCOTT:</p> <p>22 <b>Q. I've handed you what was</b></p> <p>23 <b>previously marked in Mr. Sutton's</b></p> <p>24 <b>deposition as Exhibits 9 through 13 and 15</b></p> <p>25 <b>through 19, all of which are intake reports</b></p>	<p style="text-align: right;">Page 112</p> <p>1 T. Sharinn</p> <p>2 <b>Q. Would you have reviewed it prior</b></p> <p>3 <b>to it being completed?</b></p> <p>4 A. Without disparaging Greenberg</p> <p>5 Traurig and making my life sound hellacious</p> <p>6 while I was an associate there, I was lucky</p> <p>7 if I had time to grab a drink of water. I</p> <p>8 averaged something like 2,400 hours a year</p> <p>9 for them billable. I probably would have</p> <p>10 looked at it quickly, but to me it would</p> <p>11 have been let me get to work whatever I've</p> <p>12 got to get to work on.</p> <p>13 <b>Q. You've heard the saying devils in</b></p> <p>14 <b>the detail?</b></p> <p>15 A. Yeah, I've heard that.</p> <p>16 <b>Q. I want to work through these, I</b></p> <p>17 <b>hate to do it in some respects, but I think</b></p> <p>18 <b>what you'll find at the end of it is that</b></p> <p>19 <b>there was some effort made to distinguish</b></p> <p>20 <b>between various Quickie-related matters in</b></p> <p>21 <b>the course of these different intake</b></p> <p>22 <b>memorandum.</b></p> <p>23 A. Well, let's go through them.</p> <p>24 <b>Q. All right. So let's just take</b></p> <p>25 <b>Number 9, Exhibit Number 9. That's a</b></p>
<p style="text-align: right;">Page 111</p> <p>1 T. Sharinn</p> <p>2 <b>for Greenberg Traurig in connection with</b></p> <p>3 <b>Colvin group related matters. I'll give</b></p> <p>4 <b>you a moment to look at that and tell me if</b></p> <p>5 <b>I've gotten that wrong in any respect.</b></p> <p>6 A. I'm laughing only because I see a</p> <p>7 lot of typos already. I mean, I obviously</p> <p>8 didn't fill these out. This looks like it</p> <p>9 would be filled out by a secretary or</p> <p>10 paralegal.</p> <p>11 <b>Q. Would you -- well, let's just</b></p> <p>12 <b>first, did I accurately reflect what they</b></p> <p>13 <b>are, for the record?</b></p> <p>14 A. They are. I'm wondering what</p> <p>15 happened to Exhibit 14.</p> <p>16 <b>Q. 14 is an unrelated -- not</b></p> <p>17 <b>unrelated, but it's a document that was not</b></p> <p>18 <b>an intake memorandum. It was just</b></p> <p>19 <b>something that came up in the middle of it.</b></p> <p>20 A. Got it.</p> <p>21 <b>Q. So I'm not withholding one of the</b></p> <p>22 <b>intake memos.</b></p> <p>23 A. No, I was just wondering. Yeah,</p> <p>24 they look like intake forms. Like I said,</p> <p>25 I probably wouldn't have filled this out.</p>	<p style="text-align: right;">Page 113</p> <p>1 T. Sharinn</p> <p>2 <b>general matter which is given the matter</b></p> <p>3 <b>number of point 01, right?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. And that's in the middle of the</b></p> <p>6 <b>page where it says matter information.</b></p> <p>7 <b>And the client there is 51822,</b></p> <p>8 <b>right?</b></p> <p>9 A. Are you talking about the number</p> <p>10 after matter information?</p> <p>11 <b>Q. Yes.</b></p> <p>12 A. Then, yes.</p> <p>13 <b>Q. So in your billing for this</b></p> <p>14 <b>particular client matter, you would enter</b></p> <p>15 <b>the 51822 and then point 01 as a specific</b></p> <p>16 <b>matter, right?</b></p> <p>17 A. No. I always just kept a hand</p> <p>18 diary of my billables. So I would have</p> <p>19 just wrote down probably something like</p> <p>20 Quickie or whatever the client was, I'd</p> <p>21 just write down the name of the client and</p> <p>22 I probably would write down what the matter</p> <p>23 concerned and then leave it to my assistant</p> <p>24 to enter the time and put in the right</p> <p>25 number.</p>



30 (Pages 114 to 117)

<p style="text-align: right;">Page 114</p> <p>1 T. Sharinn</p> <p>2 <b>Q. All right.</b></p> <p>3 A. But generally speaking --</p> <p>4 <b>Q. So you didn't have like a system</b></p> <p>5 <b>and maybe we've just advanced, I used to do</b></p> <p>6 <b>it by hand, too, where you have on your</b></p> <p>7 <b>computer, you know, client, matter and then</b></p> <p>8 <b>I type in my own now, that's the only thing</b></p> <p>9 <b>I type I think.</b></p> <p>10 A. Funny you should say that. Yeah,</p> <p>11 I'm no different than probably you. I had</p> <p>12 never done that prior to my current job,</p> <p>13 even at Baker.</p> <p>14 All my partners looked at me like</p> <p>15 I was crazy everywhere I was, like why</p> <p>16 don't you just put it in, it's easier than</p> <p>17 writing it down, but sometimes it's hard to</p> <p>18 teach an old dog a new trick.</p> <p>19 <b>Q. And so when you had your time</b></p> <p>20 <b>diary or whatever, you didn't necessarily</b></p> <p>21 <b>distinguish between the various client</b></p> <p>22 <b>matter numbers. You would just more</b></p> <p>23 <b>generally reference what it pertained to</b></p> <p>24 <b>and then leave it to your assistant to</b></p> <p>25 <b>assign the number?</b></p>	<p style="text-align: right;">Page 116</p> <p>1 T. Sharinn</p> <p>2 safe, a trap for things that you can't</p> <p>3 figure out where else it belongs.</p> <p>4 <b>Q. Okay.</b></p> <p>5 <b>The next one, which is Exhibit</b></p> <p>6 <b>10, is again same client 51822, and the</b></p> <p>7 <b>client is in fact Quickie, LLC, right, do</b></p> <p>8 <b>you see that up in item number 2?</b></p> <p>9 A. Yes, sir.</p> <p>10 <b>Q. And that's the client number that</b></p> <p>11 <b>is assigned to that particular client,</b></p> <p>12 <b>right?</b></p> <p>13 A. Yes, sir, from what I could see</p> <p>14 on the paper.</p> <p>15 <b>Q. And in this particular intake is</b></p> <p>16 <b>for matter number 0101, right?</b></p> <p>17 A. That's what it says, yes, sir.</p> <p>18 <b>Q. And that's for, if you look in</b></p> <p>19 <b>item number 6, passive knotless suture</b></p> <p>20 <b>terminating system?</b></p> <p>21 A. Yes, sir.</p> <p>22 <b>Q. And then it says below that</b></p> <p>23 <b>number 7, description of matter is patent</b></p> <p>24 <b>prosecution, right?</b></p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 115</p> <p>1 T. Sharinn</p> <p>2 A. Yes and then, you know --</p> <p>3 exactly, that would be pretty much it. I</p> <p>4 relied heavily on my assistants for</p> <p>5 administrative capacity. I did the legal</p> <p>6 stuff, they did the admin stuff.</p> <p>7 <b>Q. All right. So let's just kind of</b></p> <p>8 <b>continue. Point 01 -- and I know that</b></p> <p>9 <b>there are additional 0's afterwards, I'm</b></p> <p>10 <b>just going to go to the first ones that</b></p> <p>11 <b>kind of identify the matter.</b></p> <p>12 A. Okay.</p> <p>13 <b>Q. 101 is general?</b></p> <p>14 A. Okay.</p> <p>15 <b>Q. Because that's what it has in</b></p> <p>16 <b>terms of matter name, is that right?</b></p> <p>17 A. I don't see it.</p> <p>18 <b>Q. Look right below matter</b></p> <p>19 <b>information, number 6.</b></p> <p>20 A. Oh, matter name general, yes.</p> <p>21 <b>Q. So we have the general matter.</b></p> <p>22 <b>And what generally would you think would be</b></p> <p>23 <b>billed towards the general matter?</b></p> <p>24 A. Probably not much. I mean, like</p> <p>25 I said, it's like kind of probably just a</p>	<p style="text-align: right;">Page 117</p> <p>1 T. Sharinn</p> <p>2 <b>Q. Just sitting here right now, do</b></p> <p>3 <b>you have any sense of what patent</b></p> <p>4 <b>prosecution that's referring to?</b></p> <p>5 A. I think by that time the patent</p> <p>6 had already been prosecuted, but you still</p> <p>7 have ongoing responsibilities when you're</p> <p>8 the attorney of record.</p> <p>9 <b>Q. What kind of ongoing</b></p> <p>10 <b>responsibilities?</b></p> <p>11 A. One which is at the center of</p> <p>12 this matter would be whether or not</p> <p>13 maintenance fees got paid.</p> <p>14 <b>Q. And since we are with the intake</b></p> <p>15 <b>of this in September of 2001, this is well</b></p> <p>16 <b>after the issuance of the patent in May of</b></p> <p>17 <b>2000, right?</b></p> <p>18 A. Well, a calendar would tell us</p> <p>19 that, yes, sir.</p> <p>20 <b>Q. Well, really, I was just pointing</b></p> <p>21 <b>you to the reference that this date does</b></p> <p>22 <b>come after the issue date as you suggest?</b></p> <p>23 A. Specific recollection I don't</p> <p>24 have, but yes, from the document, that's</p> <p>25 what I would read it to mean.</p>

31 (Pages 118 to 121)

<p style="text-align: right;">Page 118</p> <p>1 T. Sharinn</p> <p>2 <b>Q. Specific recollection as to the</b></p> <p>3 <b>date of the patent?</b></p> <p>4 A. Or the date that I opened the</p> <p>5 matter.</p> <p>6 <b>Q. Okay.</b></p> <p>7 <b>Do you have any -- I don't want</b></p> <p>8 <b>to belabor it, Mr. Sharinn, but just so</b></p> <p>9 <b>that we have it as we go from a point of</b></p> <p>10 <b>reference, that letter that you send out</b></p> <p>11 <b>with all the vitals on the patent, in</b></p> <p>12 <b>Exhibit 34 -- no, let's see -- Exhibit 21,</b></p> <p>13 <b>just to refresh your recollection as to the</b></p> <p>14 <b>issue date, 5/23/2000, just as we go</b></p> <p>15 <b>forward so you don't have to take my word</b></p> <p>16 <b>for it?</b></p> <p>17 A. No, that's fine, I take your</p> <p>18 word.</p> <p>19 <b>Q. So we're now on Exhibit 11 and</b></p> <p>20 <b>that is the same client, Quickie, right?</b></p> <p>21 A. Yes, sir.</p> <p>22 <b>Q. Also, opened on September 9th of</b></p> <p>23 <b>2001?</b></p> <p>24 A. Yep.</p> <p>25 <b>Q. Which is sometime after you</b></p>	<p style="text-align: right;">Page 120</p> <p>1 T. Sharinn</p> <p>2 this might be an example of either my</p> <p>3 secretary making two-for-one or just -- I</p> <p>4 don't know, maybe there was another that</p> <p>5 I'm not aware of.</p> <p>6 Again, Steve would call with</p> <p>7 great ideas all the time and I would open</p> <p>8 matters and then nothing would ever happen</p> <p>9 with them. They would kind of die in the</p> <p>10 vine.</p> <p>11 <b>Q. All right.</b></p> <p>12 <b>In any event in the previous one,</b></p> <p>13 <b>Exhibit 10, 0101, matter 0101, that's a</b></p> <p>14 <b>terminating system. 0102 is a suture</b></p> <p>15 <b>terminator.</b></p> <p>16 A. That just means they didn't type</p> <p>17 system.</p> <p>18 <b>Q. So you don't know if there's any</b></p> <p>19 <b>difference between the two?</b></p> <p>20 A. I don't think there is actually,</p> <p>21 but I'm not sure.</p> <p>22 <b>Q. All right.</b></p> <p>23 <b>Exhibit 12 opened or the intake</b></p> <p>24 <b>memo created on November 1, 2001 also for</b></p> <p>25 <b>Quickie?</b></p>
<p style="text-align: right;">Page 119</p> <p>1 T. Sharinn</p> <p>2 <b>joined Greenberg, isn't it?</b></p> <p>3 A. I don't recall. I guess it must</p> <p>4 be.</p> <p>5 <b>Q. You did join them in 2001, but do</b></p> <p>6 <b>you recall whether it was beginning of the</b></p> <p>7 <b>year, middle of the year, end of the year?</b></p> <p>8 A. This is just before 9/11. I know</p> <p>9 I had been there for a few months when 9/11</p> <p>10 hit.</p> <p>11 <b>Q. The matter number is point 0102,</b></p> <p>12 <b>right?</b></p> <p>13 A. Yes, sir.</p> <p>14 <b>Q. And it's the matter number is</b></p> <p>15 <b>concentric passive knotless suture</b></p> <p>16 <b>terminator, right?</b></p> <p>17 A. Yes, sir.</p> <p>18 <b>Q. Is that different from the '160</b></p> <p>19 <b>Patent?</b></p> <p>20 A. I don't know. Doesn't look like</p> <p>21 it.</p> <p>22 <b>Q. All right.</b></p> <p>23 <b>And then it's described as patent</b></p> <p>24 <b>prosecution as well.</b></p> <p>25 A. That's why I'm laughing. I think</p>	<p style="text-align: right;">Page 121</p> <p>1 T. Sharinn</p> <p>2 A. Yeah.</p> <p>3 <b>Q. Matter information, this one is</b></p> <p>4 <b>point 0103, correct?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And this is for arterial fixation</b></p> <p>7 <b>avoiding sutures, right?</b></p> <p>8 A. Yes, sir.</p> <p>9 <b>Q. Also for a patent application?</b></p> <p>10 A. Yes, sir.</p> <p>11 <b>Q. Refresh any recollection?</b></p> <p>12 A. It does a little bit, yes, sir.</p> <p>13 <b>Q. It sounded like it might.</b></p> <p>14 <b>Different than the '160 Patent?</b></p> <p>15 A. I think so, yes, sir.</p> <p>16 <b>Q. Do you recall anything more as to</b></p> <p>17 <b>what was done, whether this had made any</b></p> <p>18 <b>progress or --</b></p> <p>19 A. Yes, sir.</p> <p>20 <b>Q. It did?</b></p> <p>21 A. Not sir. I recall more. This</p> <p>22 would be another one of those examples of a</p> <p>23 4:00 in the morning phone call that I later</p> <p>24 got reprimanded for from Steve where they</p> <p>25 wanted to, and I tried to talk them out of</p>



32 (Pages 122 to 125)

<p style="text-align: right;">Page 122</p> <p>1 T. Sharinn</p> <p>2 this when I was at Pepe &amp; Hazard, too, but</p> <p>3 it was relentless -- if it's what I think</p> <p>4 it is, he wanted to file a patent for the</p> <p>5 surgical method, and at the time, if I</p> <p>6 remember the law correctly, the book was</p> <p>7 still out on whether or not surgical</p> <p>8 methods were patentable for a variety of</p> <p>9 reasons, not the least of which is whether</p> <p>10 it fell into 101 as patentable subject</p> <p>11 matter, and I remember doing some research,</p> <p>12 I think on this top either up at Pepe &amp;</p> <p>13 Hazard or at Greenberg, and I opened the</p> <p>14 matter primarily just because he was bent</p> <p>15 on talking -- if this is the correct</p> <p>16 matter -- he was bent on talking about it.</p> <p>17 But I think this would be an</p> <p>18 example to coin the phrase I said a moment</p> <p>19 ago of something dying on the vine and me</p> <p>20 just --</p> <p>21 <b>Q. But something you did try to</b></p> <p>22 <b>distinguish and segregate from other</b></p> <p>23 <b>Quickie stuff that you would do?</b></p> <p>24 A. Yeah, that would be a fair way to</p> <p>25 describe that.</p>	<p style="text-align: right;">Page 124</p> <p>1 T. Sharinn</p> <p>2 A. I don't know.</p> <p>3 <b>Q. It still says Quickie, LLC,</b></p> <p>4 <b>right?</b></p> <p>5 A. Oh, it's the Quickie v.</p> <p>6 Medtronics.</p> <p>7 <b>Q. I was going to get there. But</b></p> <p>8 <b>the client name is Quickie, right?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. And this is now matter point</b></p> <p>11 <b>0104, right?</b></p> <p>12 A. Yes, sir.</p> <p>13 <b>Q. And this is the litigation?</b></p> <p>14 A. Yes, sir.</p> <p>15 <b>Q. Against Medtronics specifically?</b></p> <p>16 A. Yes, sir.</p> <p>17 <b>Q. All right.</b></p> <p>18 <b>And then we skip to 14 because</b></p> <p>19 <b>it's not an intake memorandum. We get to</b></p> <p>20 <b>Number 15, and that's opened January 29,</b></p> <p>21 <b>2002, so we now are in the 2002 time frame,</b></p> <p>22 <b>also for Quickie, correct, as the client?</b></p> <p>23 A. Yes, sir.</p> <p>24 <b>Q. This is the 51822 client, right?</b></p> <p>25 A. I don't pay much attention to the</p>
<p style="text-align: right;">Page 123</p> <p>1 T. Sharinn</p> <p>2 <b>Q. So there is some effort on your</b></p> <p>3 <b>part to distinguish the various aspects of</b></p> <p>4 <b>your representation with regards to Quickie</b></p> <p>5 <b>as evidenced by these intakes?</b></p> <p>6 A. Yeah. I mean, you know, maybe</p> <p>7 this is part of being an associate, you</p> <p>8 know, puffing your chest a little bit and</p> <p>9 trying to make yourself look a little more</p> <p>10 important than you might be.</p> <p>11 When I look back on it now, this</p> <p>12 might be me trying to basically show myself</p> <p>13 as being the potential of many matters, not</p> <p>14 just one matter, not being one pony show.</p> <p>15 <b>Q. Okay.</b></p> <p>16 A. But I don't know.</p> <p>17 <b>Q. Exhibit 13, open November 28,</b></p> <p>18 <b>2001. This is also for Quickie, right?</b></p> <p>19 A. I don't know because I'm looking</p> <p>20 up at the bill sent to, and it's to Alan</p> <p>21 Fell, care of Rick Steiner. So it might</p> <p>22 have been, it might not have been. I'm</p> <p>23 also looking at the number -- I guess the</p> <p>24 number is the same.</p> <p>25 <b>Q. Still the same, 51822 --</b></p>	<p style="text-align: right;">Page 125</p> <p>1 T. Sharinn</p> <p>2 number. I'll look up at the number 2,</p> <p>3 where it says client name because that</p> <p>4 would probably be a better indicator than</p> <p>5 necessarily the number.</p> <p>6 <b>Q. Right.</b></p> <p>7 A. Only because I wouldn't know if</p> <p>8 my assistant wrote the wrong number down.</p> <p>9 <b>Q. Okay.</b></p> <p>10 <b>Fair enough.</b></p> <p>11 <b>Matter information, this is point</b></p> <p>12 <b>0105, which then has underneath it as a</b></p> <p>13 <b>matter name Guidance, Inc.?</b></p> <p>14 A. Yeah, I think that meant to be</p> <p>15 Guidant. This would be an example of</p> <p>16 another clerical area.</p> <p>17 <b>Q. And this is essentially the</b></p> <p>18 <b>possible infringement action against</b></p> <p>19 <b>Guidant, much like the Medtronics</b></p> <p>20 <b>litigation?</b></p> <p>21 <b>It was contemplated that those</b></p> <p>22 <b>two parties were potential infringers?</b></p> <p>23 A. I think there were some others,</p> <p>24 but those were the two major ones that they</p> <p>25 were most intrigued by.</p>

33 (Pages 126 to 129)

<p style="text-align: right;">Page 126</p> <p>1 T. Sharinn</p> <p>2 <b>Q. And you initiated against</b></p> <p>3 <b>Medtronic and were in a sense considering</b></p> <p>4 <b>the Guidant part?</b></p> <p>5 A. I think the way that Steve has</p> <p>6 rationalized it was that he wanted to do</p> <p>7 both, and I explained to him that it really</p> <p>8 was not such a smart move to take them both</p> <p>9 on at once, that they were really big</p> <p>10 companies, pick one or the other, and I</p> <p>11 think that he felt he had a better shot</p> <p>12 against Medtronic -- and again, this me</p> <p>13 thinking, not knowing, because it's been</p> <p>14 many years -- but my recollection is kind</p> <p>15 of that I said we had a license agreement</p> <p>16 and that at least on a damages level if we</p> <p>17 were able to sustain prove that they were</p> <p>18 liable for patent infringement and it was</p> <p>19 enforceable, that the license agreement</p> <p>20 would certainly provide us if nothing else</p> <p>21 a benchmark possibly for damages, whereas</p> <p>22 the Guidant case we would require a real</p> <p>23 expert to get involved and to do a damages</p> <p>24 work-up.</p> <p>25 <b>Q. Okay.</b></p>	<p style="text-align: right;">Page 128</p> <p>1 T. Sharinn</p> <p>2 <b>16?</b></p> <p>3 A. I do.</p> <p>4 <b>Q. All right.</b></p> <p>5 <b>Exhibit 17, we're going down the</b></p> <p>6 <b>track about 6 months, we're in August of</b></p> <p>7 <b>2002 and now this is opened up as matter</b></p> <p>8 <b>number 0107 for Quickie, right?</b></p> <p>9 A. Yes, sir.</p> <p>10 <b>Q. And the matter name is passive</b></p> <p>11 <b>knotless suture system patent, referring to</b></p> <p>12 <b>the '160 Patent, correct?</b></p> <p>13 A. Yeah, that's what it says, yes,</p> <p>14 sir.</p> <p>15 <b>Q. And in item number 7, matter</b></p> <p>16 <b>description patent for medical instrument.</b></p> <p>17 <b>What, if any, light can you shed</b></p> <p>18 <b>on the opening of this matter?</b></p> <p>19 A. I can't for the life of me shed</p> <p>20 any. I couldn't even understand why this</p> <p>21 would have been opened. The only thing I</p> <p>22 can think of is Paula's desk was right</p> <p>23 outside of mine, and I can just see me on</p> <p>24 the phone with Steve and say Paula, open up</p> <p>25 another matter for Quickie, because that</p>
<p style="text-align: right;">Page 127</p> <p>1 T. Sharinn</p> <p>2 <b>Number 16, Exhibit 16 comes just</b></p> <p>3 <b>shortly after the openings of the 0105</b></p> <p>4 <b>matter. This is 0106, likewise for</b></p> <p>5 <b>Quickie, right?</b></p> <p>6 A. Yes, sir.</p> <p>7 <b>Q. And this is for Guidant</b></p> <p>8 <b>Corporation?</b></p> <p>9 A. Is it okay if I compare it to 15?</p> <p>10 <b>Q. Please do, and if you can shed</b></p> <p>11 <b>any light on it --</b></p> <p>12 A. I think I can. I mean, I think</p> <p>13 this is another example of either my</p> <p>14 assistant opening too many. Paula was a</p> <p>15 great assistant. She really wanted to see</p> <p>16 me succeed. I'm not convinced that she</p> <p>17 didn't open multiple matters at times</p> <p>18 trying to make me look bigger than I was,</p> <p>19 and I may not have argued with it at the</p> <p>20 time because I felt there was no harm, no</p> <p>21 foul.</p> <p>22 <b>Q. You think these are the same</b></p> <p>23 <b>matter, though?</b></p> <p>24 A. I do.</p> <p>25 <b>Q. And these being Exhibits 15 and</b></p>	<p style="text-align: right;">Page 129</p> <p>1 T. Sharinn</p> <p>2 doesn't even sound like something I would</p> <p>3 write, patent for medical instrument -- I</p> <p>4 have no idea.</p> <p>5 But I do notice that it</p> <p>6 references the '160 Patent above in number</p> <p>7 6, so I don't know what that involves.</p> <p>8 <b>Q. All right.</b></p> <p>9 <b>So whatever it is, it involves in</b></p> <p>10 <b>particular the '160 Patent?</b></p> <p>11 A. That's what it says.</p> <p>12 <b>Q. All right.</b></p> <p>13 A. I don't know that that is the</p> <p>14 case or if that's just Paula, you know,</p> <p>15 putting stuff in and me not noticing it.</p> <p>16 <b>Q. And it is different from the</b></p> <p>17 <b>patent litigation, which is 0104?</b></p> <p>18 A. It could be one and the same</p> <p>19 again. I don't know.</p> <p>20 <b>Q. Okay.</b></p> <p>21 A. I really don't.</p> <p>22 <b>Q. Exhibit 18, we've gone down the</b></p> <p>23 <b>tracks a couple of more months and now</b></p> <p>24 <b>we're in November of 2002, another matter</b></p> <p>25 <b>opened up for Quickie, corrects?</b></p>

34 (Pages 130 to 133)

<p style="text-align: right;">Page 130</p> <p>1 <b>T. Sharinn</b>  2 A. Yes, sir.  3 <b>Q. This is matter number 0108</b>  4 <b>referring to a new surgical drape patent</b>  5 <b>license, right?</b>  6 A. Yes, sir.  7 <b>Q. This is not the '160 Patent?</b>  8 A. No, sir.  9 <b>Q. Do you recall any progress made</b>  10 <b>on this or did it die on the vine?</b>  11 A. A little bit I understand. We  12 had talked a little bit about this. You  13 had asked me earlier do I remember surgical  14 drape, and I told you I remembered there  15 being some kind of an invention, but I had  16 no specific recollection of what the  17 invention was.  18 When I look at this now, it kind  19 of does make a little bit of sense to me.  20 It would have been a new invention.  21 Adrienne was a terrible assistant. Paula  22 left to go to graduate school and I was  23 kind of thrown into this Adrienne Ivan  24 person for a short while, and she really  25 was terrible.</p>	<p style="text-align: right;">Page 132</p> <p>1 T. Sharinn  2 It just doesn't have anything to do with a  3 fishing boat, and he was the captain of  4 their boat, that's how he got involved in  5 the other one, because it was a cleat and  6 they were out at sea when they invented.  7 <b>Q. All right.</b>  8 <b>So we go down another month,</b>  9 <b>Exhibit 19, a matter opened up in December</b>  10 <b>of 2002 for Quickie. This one being matter</b>  11 <b>number 0109, right?</b>  12 A. Right.  13 <b>Q. This one does refer specifically</b>  14 <b>to the '160 Patent?</b>  15 A. It does.  16 <b>Q. And more specifically refers to</b>  17 <b>the re-examination of the '160 Patent,</b>  18 <b>right?</b>  19 A. That's correct.  20 <b>Q. By Medtronic?</b>  21 A. It is.  22 <b>Q. And so this would be separate and</b>  23 <b>apart from the 0104 matter which was the</b>  24 <b>Medtronic litigation?</b>  25 A. Yes, sir.</p>
<p style="text-align: right;">Page 131</p> <p>1 T. Sharinn  2 My guess is I just said open a  3 matter for Colvin and she put it into  4 Quickie. So it would be a new invention,  5 but the likelihood is, and I don't know if  6 you've taken Mr. Fell's deposition yet, but  7 I'd suspect that he would have probably  8 told you that following the typical Colvin  9 group protocol, a new invention like this  10 that has apparently nothing to do with the  11 Quickie original stuff would have been a  12 new matter for a different client, they  13 would have formed a new company that would  14 concern the drape because, for instance,  15 Paul Otto is a member of Quickie, LLC, if I  16 remember correctly.  17 <b>Q. Right, yes.</b>  18 A. I only know that because Paul was  19 a high school person that I knew, we played  20 baseball together in high school, and he  21 was a couple of years older than me and had  22 me in a headlock one or two times, so I've  23 never forgotten him.  24 But I can't see how he would have  25 had anything to do with the surgical drape.</p>	<p style="text-align: right;">Page 133</p> <p>1 T. Sharinn  2 <b>Q. So you are trying to divide</b>  3 <b>somewhat?</b>  4 A. Yeah. I mean, this would be  5 wishful thinking on my part, I think, more  6 than anything else. I was owed money by  7 Quickie and I got a lot of pressure about  8 the fact that I was still owed money, even  9 though we had transferred files, I think,  10 at this point.  11 I don't remember exactly the  12 timing, but I suspect this would have been  13 after the Markman Hearing. Am I correct?  14 <b>Q. Yes, and that's where I was going</b>  15 <b>with this in just a minute.</b>  16 A. I'm sorry, I'll let you ask your  17 questions.  18 <b>Q. As you correctly recall, this is</b>  19 <b>after the Markman Hearing and you're</b>  20 <b>opening up a new matter in connection with</b>  21 <b>Quickie for purposes of the re-examination,</b>  22 <b>right?</b>  23 A. Well, I think what it was, again,  24 is, was like I said, a little bit of  25 wishful thinking and a little bit of hey,</p>

35 (Pages 134 to 137)

<p style="text-align: right;">Page 134</p> <p>1 T. Sharinn</p> <p>2 guys, if you're going to call me and ask me</p> <p>3 questions, I need to bill you.</p> <p>4 <b>Q. Do you recall after the Markman</b></p> <p>5 <b>Hearing notifying the Patent Office that</b></p> <p>6 <b>you were still counsel of record for the</b></p> <p>7 <b>'160 Patent for purposes of the Patent</b></p> <p>8 <b>Office?</b></p> <p>9 A. I can't imagine where I would do</p> <p>10 that. If you're of record, you're of</p> <p>11 record. You don't call them up and say</p> <p>12 hey, I'm still of record. So I don't know,</p> <p>13 did I do that?</p> <p>14 <b>Q. I don't want to characterize the</b></p> <p>15 <b>document. We'll go through it and see what</b></p> <p>16 <b>you'd make of it.</b></p> <p>17 A. I can't imagine why I would.</p> <p>18 <b>Q. So we have then, these are,</b></p> <p>19 <b>whether rightly or wrongly, these are all</b></p> <p>20 <b>reflected as being Quickie client matter</b></p> <p>21 <b>Intake memoranda matter, right?</b></p> <p>22 A. That's certainly what they say on</p> <p>23 the document. I'm not convinced that, it</p> <p>24 wasn't like I said, a combination of</p> <p>25 several factors, not the least of which is</p>	<p style="text-align: right;">Page 136</p> <p>1 T. Sharinn</p> <p>2 <b>Patent Office?</b></p> <p>3 A. This would be just a pro forma</p> <p>4 document. We had moved offices while at</p> <p>5 Greenberg Traurig, we were in the lipstick</p> <p>6 building originally and then moved over to</p> <p>7 200 Park Avenue, and my guess is she had</p> <p>8 run this out for every matter I had ever</p> <p>9 had any kind of responsibility for.</p> <p>10 <b>Q. On its face, it's telling the</b></p> <p>11 <b>Patent Office that you are the</b></p> <p>12 <b>correspondent and fee address of record,</b></p> <p>13 <b>right?</b></p> <p>14 MR. KAMINSKY: Objection to the</p> <p>15 form of the question.</p> <p>16 A. On the face it says change of</p> <p>17 correspondence, address. It says it's a</p> <p>18 patent. It clearly refers to the '160</p> <p>19 Patent. I don't know what else to say</p> <p>20 about that.</p> <p>21 <b>Q. All right.</b></p> <p>22 <b>But in looking at the change of</b></p> <p>23 <b>correspondence address form, it is</b></p> <p>24 <b>reflecting for the '160 Patent that you are</b></p> <p>25 <b>the person at Greenberg Traurig that is</b></p>
<p style="text-align: right;">Page 135</p> <p>1 T. Sharinn</p> <p>2 embarrassing as it is to say in this day a</p> <p>3 little bit of puffing on my part internally</p> <p>4 for Greenberg Traurig.</p> <p>5 <b>Q. Exhibit 7.</b></p> <p>6 A. Exhibit 7.</p> <p>7 MR. KAMINSKY: Exhibit 7, we have</p> <p>8 it here.</p> <p>9 BY MR. SCOTT:</p> <p>10 <b>Q. Mr. Sharinn, if you would just</b></p> <p>11 <b>take a moment to look at that.</b></p> <p>12 A. Okay.</p> <p>13 <b>Q. This is a piece of correspondence</b></p> <p>14 <b>sent on Greenberg Traurig's letterhead by</b></p> <p>15 <b>Marsha Twitty --</b></p> <p>16 A. To Marsha Twitty.</p> <p>17 <b>Q. I'm sorry, to Marsha Twitty from</b></p> <p>18 <b>the PTO, right?</b></p> <p>19 A. From the PTO.</p> <p>20 <b>Q. And it's sent by Linda Garamone?</b></p> <p>21 A. Right.</p> <p>22 <b>Q. Who is she?</b></p> <p>23 A. Linda was my patent paralegal at</p> <p>24 Greenberg Traurig.</p> <p>25 <b>Q. And what is being sent to the</b></p>	<p style="text-align: right;">Page 137</p> <p>1 T. Sharinn</p> <p>2 <b>reflected as the correspondent address,</b></p> <p>3 <b>right?</b></p> <p>4 A. I guess, yes, sir.</p> <p>5 <b>Q. But you don't have to guess, I</b></p> <p>6 <b>mean, that is what it's reporting.</b></p> <p>7 A. If that's what the document says</p> <p>8 to you, that's fine. I don't know. I'm</p> <p>9 telling you I don't have any recollection</p> <p>10 of this document.</p> <p>11 <b>Q. I just want to understand if this</b></p> <p>12 <b>is supposed to be telling me something</b></p> <p>13 <b>different and you know, then please tell me</b></p> <p>14 <b>that.</b></p> <p>15 A. I'm not even sure when it was</p> <p>16 filed. I mean, I don't really know much</p> <p>17 about this document.</p> <p>18 MR. KAMINSKY: Let me just</p> <p>19 interject between the two of you. I'm</p> <p>20 objecting to the form of the question</p> <p>21 because the witness says he doesn't</p> <p>22 recall the document. So I'm objecting</p> <p>23 to your asking him what he thinks the</p> <p>24 document is telling you.</p> <p>25 MR. SCOTT: I'm only asking for</p>

36 (Pages 138 to 141)

<p style="text-align: right;">Page 138</p> <p>1 T. Sharinn</p> <p>2 his understanding as a licensed patent</p> <p>3 attorney familiar with the forms of</p> <p>4 the Patent Office, does this change of</p> <p>5 correspondence address on the third</p> <p>6 page of Exhibit Number 7 reflect you</p> <p>7 and Greenberg Traurig as the</p> <p>8 correspondent addressee for the '160</p> <p>9 Patent.</p> <p>10 MR. KAMINSKY: I object to the</p> <p>11 form of the question.</p> <p>12 A. I don't think I understand your</p> <p>13 question to be honest.</p> <p>14 <b>Q. Dare I ask what it is that you</b></p> <p>15 <b>don't understand about my question?</b></p> <p>16 A. I'm not sure that I can tell you</p> <p>17 that. I don't really know what you're</p> <p>18 asking me. Why don't you just ask it to me</p> <p>19 pretty simple and I'll give you a pretty</p> <p>20 simple honest answer. I don't know.</p> <p>21 <b>Q. All right.</b></p> <p>22 A. I mean, the document speaks for</p> <p>23 itself. It's a form. As a patent</p> <p>24 attorney, so you understand, good luck in</p> <p>25 finding one who would have paid a lot of</p>	<p style="text-align: right;">Page 140</p> <p>1 T. Sharinn</p> <p>2 <b>Q. Do you have any reason to believe</b></p> <p>3 <b>that that's not your signature?</b></p> <p>4 A. No, probably not. I mean, there</p> <p>5 might have been a time where I would be</p> <p>6 called by an assistant and say this is, you</p> <p>7 know, this is what we need to send. I</p> <p>8 could have been on the road, for all I</p> <p>9 know.</p> <p>10 <b>Q. Are you accustomed to signing or</b></p> <p>11 <b>having signed on your behalf with</b></p> <p>12 <b>permission presumably documents that you</b></p> <p>13 <b>don't understand?</b></p> <p>14 A. No.</p> <p>15 MR. KAMINSKY: Objection to the</p> <p>16 form of the question.</p> <p>17 BY MR. SCOTT:</p> <p>18 <b>Q. What do you understand this</b></p> <p>19 <b>document to say?</b></p> <p>20 A. It looks to me as though it's a</p> <p>21 fee address indication form.</p> <p>22 <b>Q. In connection with what patent?</b></p> <p>23 A. It would appear to be the 160.</p> <p>24 <b>Q. As of what date?</b></p> <p>25 A. I see a lot of different dates</p>
<p style="text-align: right;">Page 139</p> <p>1 T. Sharinn</p> <p>2 attention to a document like this.</p> <p>3 Again, this is something that</p> <p>4 would have been generated by a paralegal</p> <p>5 and probably put in front of me with a</p> <p>6 stack of others just like it.</p> <p>7 So are you asking me, am I</p> <p>8 attesting to the PTO under penalty of</p> <p>9 perjury that I am responsible for this</p> <p>10 matter?</p> <p>11 <b>Q. Well, let me ask a different</b></p> <p>12 <b>question.</b></p> <p>13 A. No, I'm asking you is that what</p> <p>14 you're asking me.</p> <p>15 <b>Q. All I asked you was does this</b></p> <p>16 <b>form reflect to your understanding that you</b></p> <p>17 <b>and Greenberg Traurig are the correspondent</b></p> <p>18 <b>addressee of record for purposes of the</b></p> <p>19 <b>Patent Office?</b></p> <p>20 MR. KAMINSKY: Objection to the</p> <p>21 form of the question.</p> <p>22 A. I don't know.</p> <p>23 <b>Q. Did you sign this form?</b></p> <p>24 A. I did, I think, I mean, that's my</p> <p>25 signature or a very good copy of it.</p>	<p style="text-align: right;">Page 141</p> <p>1 T. Sharinn</p> <p>2 here. I see October 22, 2002. I see on</p> <p>3 the cover sheet what looks like December</p> <p>4 16, 2002. Under my signature, it's October</p> <p>5 22, 2002.</p> <p>6 <b>Q. As being transmitted by Ms.</b></p> <p>7 <b>Garamone on or about December 16th of --</b></p> <p>8 A. It looks like that would have</p> <p>9 been the date I would have signed it.</p> <p>10 <b>Q. And we see here in the file</b></p> <p>11 <b>number, the Quickie client number, right,</b></p> <p>12 <b>51822?</b></p> <p>13 A. Yeah, I mean, like I told you --</p> <p>14 oh, this is for a different -- can I see</p> <p>15 the matter intake forms for a second,</p> <p>16 please. This isn't for the '160 Patent.</p> <p>17 <b>Q. Because it's referring to the</b></p> <p>18 <b>matter number 0107?</b></p> <p>19 A. Only because I looked at this</p> <p>20 just a few minutes ago.</p> <p>21 <b>Q. I think it's Exhibit 17, if I</b></p> <p>22 <b>remember right.</b></p> <p>23 A. I think you're right. Yeah, see</p> <p>24 I don't know what this -- this is one of</p> <p>25 the ones we talked about where it just</p>

37 (Pages 142 to 145)

<p style="text-align: right;">Page 142</p> <p>1 T. Sharinn</p> <p>2 doesn't make sense that -- I don't know</p> <p>3 what that invention is.</p> <p>4 <b>Q. Well, we don't have to speculate</b></p> <p>5 <b>because the intake memorandum says it</b></p> <p>6 <b>pertains to the '160 Patent, right, that's</b></p> <p>7 <b>what it matter pertains to?</b></p> <p>8 A. That's what it says, but that</p> <p>9 doesn't necessarily mean that's what it</p> <p>10 says.</p> <p>11 Like I said, I don't know because</p> <p>12 it would be silly to open up a second</p> <p>13 prosecution file on the same device, and if</p> <p>14 I'm correct, it would be a third, a third</p> <p>15 matter.</p> <p>16 I thought that 101 and 102 were</p> <p>17 also for the passive terminator system.</p> <p>18 Yeah, here is 102, terminator system, and</p> <p>19 101 is a terminator system. So why we're</p> <p>20 opening for a third one is beyond me.</p> <p>21 <b>Q. If it's beyond you, trust me,</b></p> <p>22 <b>it's beyond me.</b></p> <p>23 <b>But on the face of the document,</b></p> <p>24 <b>the intake memorandum, matter 0107 pertains</b></p> <p>25 <b>to the '160 Patent?</b></p>	<p style="text-align: right;">Page 144</p> <p>1 T. Sharinn</p> <p>2 <b>Q. Exhibit 37 is an e-mail from I</b></p> <p>3 <b>think the disaster secretary --</b></p> <p>4 A. No, no, that's a different</p> <p>5 Adrienne. This one is from Bryan Cave.</p> <p>6 <b>Q. And she is the trademark</b></p> <p>7 <b>administrator IP docket manager at Bryan</b></p> <p>8 <b>Cave, to your knowledge?</b></p> <p>9 A. That's what it says. I mean, I</p> <p>10 don't remember.</p> <p>11 <b>Q. Do you recall whether she is that</b></p> <p>12 <b>person or not?</b></p> <p>13 A. Only remember her name, but I</p> <p>14 mean, I read what it says.</p> <p>15 <b>Q. Do you know why she is sending</b></p> <p>16 <b>this e-mail to you?</b></p> <p>17 A. It sounded like they had gotten</p> <p>18 some correspondence concerning the '160</p> <p>19 Patent and I reached out to find out</p> <p>20 whether or not we should be getting those</p> <p>21 documents.</p> <p>22 <b>Q. And what was your response to</b></p> <p>23 <b>her?</b></p> <p>24 A. I told her just to send it over</p> <p>25 and that I would get it to the right</p>
<p style="text-align: right;">Page 143</p> <p>1 T. Sharinn</p> <p>2 MR. KAMINSKY: Objection to the</p> <p>3 form of the question.</p> <p>4 BY MR. SCOTT:</p> <p>5 <b>Q. Correct?</b></p> <p>6 MR. KAMINSKY: Objection to the</p> <p>7 form of the question.</p> <p>8 A. That's what the document says.</p> <p>9 <b>Q. And that is in fact the matter</b></p> <p>10 <b>number that's referred to on Exhibit Number</b></p> <p>11 <b>7 as well, correct?</b></p> <p>12 MR. KAMINSKY: Objection to the</p> <p>13 form of the question.</p> <p>14 A. That's what it says on the</p> <p>15 document. Again, without knowing what the</p> <p>16 file looks like, if you have the file</p> <p>17 wrapper here, that would be great to look</p> <p>18 at, I could tell you what that had to do</p> <p>19 with.</p> <p>20 MR. SCOTT: Let me hand you</p> <p>21 what's marked as Exhibit 37 to your</p> <p>22 deposition.</p> <p>23 (Exhibit 37, E-mail, marked for</p> <p>24 identification, as of this date.)</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 145</p> <p>1 T. Sharinn</p> <p>2 people.</p> <p>3 <b>Q. Now, what she says here is:</b></p> <p>4 <b>"Dear Todd, thank you for having</b></p> <p>5 <b>your secretary call me this morning to</b></p> <p>6 <b>confirm that you are still responsible for</b></p> <p>7 <b>U.S. Patent No. 6,066,160."</b></p> <p>8 <b>The 160, the patent, right?</b></p> <p>9 A. Yes, sir, that's what it says.</p> <p>10 <b>Q. Did you understand at that time</b></p> <p>11 <b>in December of 2002 that you were in fact</b></p> <p>12 <b>responsible for the '160 Patent for</b></p> <p>13 <b>purposes of the Patent Office?</b></p> <p>14 A. No, I did not.</p> <p>15 <b>Q. And it's your testimony that the</b></p> <p>16 <b>conversation you had with her was simply</b></p> <p>17 <b>get it to me and I'll get it to the right</b></p> <p>18 <b>people?</b></p> <p>19 A. Yes.</p> <p>20 MR. KAMINSKY: Objection to the</p> <p>21 form of the question.</p> <p>22 <b>Q. He doesn't like me characterizing</b></p> <p>23 <b>your testimony.</b></p> <p>24 A. It's okay. I mean, the reason I</p> <p>25 would do something like this, so I would</p>

38 (Pages 146 to 149)

<p style="text-align: right;">Page 146</p> <p>1 T. Sharinn</p> <p>2 understand, is she's a docketing clerk at</p> <p>3 Bryan Cave, why would I want to go through</p> <p>4 the trouble of explaining to her that I've</p> <p>5 been relieved of my duties with regards to</p> <p>6 this client when I could just as easily</p> <p>7 just have the documents walked over to my</p> <p>8 office and walk them over to Steve's?</p> <p>9 It's just the relationship I had</p> <p>10 with Steve. It wouldn't make any sense to</p> <p>11 do that.</p> <p>12 <b>Q. Do you recall who the secretary</b></p> <p>13 <b>was that would have made the call to</b></p> <p>14 <b>Ms. Leven?</b></p> <p>15 A. I would assume by the year it was</p> <p>16 either Adrienne Ivan or Paula Specht. Am I</p> <p>17 right?</p> <p>18 <b>Q. I don't know.</b></p> <p>19 A. Oh, I thought this was a quiz.</p> <p>20 <b>Q. No. Trust me. There are just</b></p> <p>21 <b>some questions --</b></p> <p>22 A. Well, you know, I saw your</p> <p>23 colleague hand you a note. I thought</p> <p>24 maybe --</p> <p>25 <b>Q. No, he wants to know who is the</b></p>	<p style="text-align: right;">Page 148</p> <p>1 T. Sharinn</p> <p>2 <b>marked as Exhibits 3 and 8. These are the</b></p> <p>3 <b>docketing records, if you will. I'll give</b></p> <p>4 <b>you a moment to get those.</b></p> <p>5 Let me just ask real quick,</p> <p>6 <b>Mr. Sharinn, have you seen those in</b></p> <p>7 <b>preparation for -- I mean, are you familiar</b></p> <p>8 <b>with the format of those?</b></p> <p>9 A. Not at all.</p> <p>10 <b>Q. Why don't you go ahead and take a</b></p> <p>11 <b>second and I'll run around the corner, if</b></p> <p>12 <b>that's all right with you.</b></p> <p>13 A. I actually need to do that, too.</p> <p>14 MR. SCOTT: All right. So let's</p> <p>15 take a break.</p> <p>16 (Recess taken from 12:17 p.m. to</p> <p>17 12:25 p.m.)</p> <p>18 BY MR. SCOTT:</p> <p>19 <b>Q. You've had a moment to kind of go</b></p> <p>20 <b>over the two docket entries that have been</b></p> <p>21 <b>produced in this litigation by Greenberg</b></p> <p>22 <b>Taurig which are Exhibits 3 and 8, right?</b></p> <p>23 A. I've looked at Exhibits 3 and 8,</p> <p>24 yes, sir.</p> <p>25 <b>Q. Are you familiar with either of</b></p>
<p style="text-align: right;">Page 147</p> <p>1 T. Sharinn</p> <p>2 <b>secretary. I'm just the puppet.</b></p> <p>3 <b>You had two secretaries there?</b></p> <p>4 A. I think I had three.</p> <p>5 <b>Q. Just kind of give me a sense of</b></p> <p>6 <b>who was first.</b></p> <p>7 A. A woman named Martin, Adrienne</p> <p>8 Martin. I think I had a lot of Adriennes</p> <p>9 obviously.</p> <p>10 <b>Q. And then?</b></p> <p>11 A. And then it was Paula Specht.</p> <p>12 Paula was great.</p> <p>13 <b>Q. That was the great one?</b></p> <p>14 A. Yeah, and then there was Adrienne</p> <p>15 Ivan, who was terrible, okay. Then I had a</p> <p>16 woman named Cindy Kozman, who was</p> <p>17 fantastic, and she left when I left, she</p> <p>18 went to go adopt a baby and decided to call</p> <p>19 the legal game over.</p> <p>20 MR. SCOTT: Are you guys still</p> <p>21 okay?</p> <p>22 MR. KAMINSKY: Sure.</p> <p>23 BY MR. SCOTT:</p> <p>24 <b>Q. I'm going to go ahead and ask</b></p> <p>25 <b>some questions about what were previously</b></p>	<p style="text-align: right;">Page 149</p> <p>1 T. Sharinn</p> <p>2 <b>these two forms?</b></p> <p>3 A. Never seen them before today.</p> <p>4 <b>Q. You testified earlier that it was</b></p> <p>5 <b>standard practice to docket a patent that</b></p> <p>6 <b>you were responsible for during the time</b></p> <p>7 <b>that you were responsible, right?</b></p> <p>8 A. I'm not sure if that's exactly</p> <p>9 what I said, but --</p> <p>10 <b>Q. I'm pretty sure it wasn't exactly</b></p> <p>11 <b>what you said.</b></p> <p>12 A. What's standard, and I think it</p> <p>13 would be true of any reputable IP practice</p> <p>14 is it's standard to, you know, enter dates</p> <p>15 that are important with ticklers in the age</p> <p>16 of computers that would pop up and let you</p> <p>17 know when things are due. This looks like</p> <p>18 a printout this would have shown something</p> <p>19 along those lines.</p> <p>20 <b>Q. It's fair to say that most IP</b></p> <p>21 <b>practices have an IP docketing system in</b></p> <p>22 <b>place?</b></p> <p>23 A. As far as I know.</p> <p>24 <b>Q. And it's an electronic one</b></p> <p>25 <b>typically nowadays?</b></p>



39 (Pages 150 to 153)

<p style="text-align: right;">Page 150</p> <p>1 T. Sharinn</p> <p>2 A. Today, yes.</p> <p>3 <b>Q. Are you familiar with Data Ease,</b></p> <p>4 <b>Flex Track or any other names of the</b></p> <p>5 <b>different vendors?</b></p> <p>6 A. No, that wouldn't be something I</p> <p>7 would get involved in.</p> <p>8 <b>Q. Okay.</b></p> <p>9 <b>These are snapshots, correct, of</b></p> <p>10 <b>at least two at different times?</b></p> <p>11 A. I don't know. That's what you're</p> <p>12 telling me, yes, sir. Understand I've</p> <p>13 never seen any of these before, so I would</p> <p>14 assume that when you talked to Greenberg</p> <p>15 Traurig they would be able to tell you what</p> <p>16 these are specifically.</p> <p>17 <b>Q. And if you don't know, then you</b></p> <p>18 <b>don't know and I'm not going to probe too</b></p> <p>19 <b>much, but from this you can see that the</b></p> <p>20 <b>entry, and let's just take Exhibit Number 3</b></p> <p>21 <b>first, pertains to the '160 Patent,</b></p> <p>22 <b>correct?</b></p> <p>23 A. Well, I look at the record and</p> <p>24 I'm able to see a lot of things. I see</p> <p>25 Patent Number 160, I see the title of the</p>	<p style="text-align: right;">Page 152</p> <p>1 T. Sharinn</p> <p>2 <b>Q. All right.</b></p> <p>3 <b>This does reflect the dates of</b></p> <p>4 <b>the maintenance fee payments?</b></p> <p>5 A. It does, yes indeed.</p> <p>6 <b>Q. And those would be consistent</b></p> <p>7 <b>with what you understood to be the 3 and a</b></p> <p>8 <b>half, 7 and a half and 11 and a half year</b></p> <p>9 <b>dates for the '160 Patent as issued on May</b></p> <p>10 <b>23, 2000, right?</b></p> <p>11 A. I wouldn't have anything</p> <p>12 understood. I wouldn't have even thought</p> <p>13 about it.</p> <p>14 <b>Q. Well, I'm just looking at it now,</b></p> <p>15 <b>but it's consistent with what your</b></p> <p>16 <b>understanding is as to what those dates</b></p> <p>17 <b>would be given the standard time for --</b></p> <p>18 A. If you want me to calculate the</p> <p>19 times, I can do that, but no, it looks</p> <p>20 approximately to fall into the right times,</p> <p>21 yes, sir.</p> <p>22 <b>Q. Now, it says that POA, and I take</b></p> <p>23 <b>it you take that to mean Power of Attorney?</b></p> <p>24 A. I don't know what else to take it</p> <p>25 for.</p>
<p style="text-align: right;">Page 151</p> <p>1 T. Sharinn</p> <p>2 patent which would reflect the '160 Patent.</p> <p>3 I also see Power of Attorney</p> <p>4 revoked on April 2, 2003. I also see</p> <p>5 things like modified last on a July 10,</p> <p>6 2003.</p> <p>7 <b>Q. And you see that the number</b></p> <p>8 <b>51822.0107 is affixed to this particular</b></p> <p>9 <b>patent up in the top left-hand corner?</b></p> <p>10 A. Again, I see that number. I</p> <p>11 don't understand it only because we saw all</p> <p>12 those other numbers, but this looks like</p> <p>13 it's a reference, but also see up in status</p> <p>14 that it says it was transferred, and I see</p> <p>15 a note here that says this application has</p> <p>16 been transferred to another firm.</p> <p>17 <b>Q. But I understand that.</b></p> <p>18 A. Yeah, to, I'm trying to be</p> <p>19 helpful and give you what I see.</p> <p>20 <b>Q. The question I have is you</b></p> <p>21 <b>understand the 51822.0107 to be the matter</b></p> <p>22 <b>number that we looked at in intake</b></p> <p>23 <b>memorandum, which is Exhibit 17, right?</b></p> <p>24 A. It reflects the numbers that we</p> <p>25 saw on Exhibit 17.</p>	<p style="text-align: right;">Page 153</p> <p>1 T. Sharinn</p> <p>2 <b>Q. Revoked and then it has the date</b></p> <p>3 <b>of 4/2/2003, right?</b></p> <p>4 A. I see that, yes, sir.</p> <p>5 <b>Q. Do I understand, though, that</b></p> <p>6 <b>your testimony is that you ceased having</b></p> <p>7 <b>responsibility for the '160 Patent as of</b></p> <p>8 <b>the date that you received the phone call</b></p> <p>9 <b>on October of 2002 from Steve following the</b></p> <p>10 <b>Markman Hearing?</b></p> <p>11 A. That would have been my</p> <p>12 understanding, yes, sir.</p> <p>13 <b>Q. And it didn't take any revocation</b></p> <p>14 <b>of any Power of Attorney for you to have</b></p> <p>15 <b>that understanding?</b></p> <p>16 A. They made it very clear on the</p> <p>17 telephone conversations that we had that I</p> <p>18 was to do no more work and bill no more</p> <p>19 time.</p> <p>20 <b>Q. So the revocation of a Power of</b></p> <p>21 <b>Attorney would have been a formality in</b></p> <p>22 <b>your, to your understanding?</b></p> <p>23 MR. KAMINSKY: Objection to form</p> <p>24 of the question.</p> <p>25 A. I guess that would be a fair</p>



40 (Pages 154 to 157)

<p style="text-align: right;">Page 154</p> <p>1 T. Sharinn 2 characterization. 3 <b>Q. Let's go ahead to Exhibit 8.</b> 4 <b>Do you recall there being a</b> 5 <b>change of the docketing systems while you</b> 6 <b>were at Greenberg Traurig?</b> 7 A. Not at all. 8 <b>Q. You don't recall any hubbub about</b> 9 <b>how it was a pain or any noise about how</b> 10 <b>we've got to put everything onto a new</b> 11 <b>system?</b> 12 A. I'm not sure if I mentioned this 13 before. I can be very social at times, but 14 discussing docketing systems would not be 15 something that would fall into the purview 16 of my social interests, and that wouldn't 17 even be something I can't imagine falling 18 into a discussion between even two 19 attorneys. 20 I could see maybe paralegals 21 complaining about having to transfer 22 information to the extent they were 23 required to do that, but I can't even see 24 an attorney saying it to another attorney. 25 <b>Q. Do you recall being a participant</b></p>	<p style="text-align: right;">Page 156</p> <p>1 T. Sharinn 2 being the primary responsible attorney. On 3 the second one, I see Al Jacobs. I'm not 4 even sure who Matt Tropper -- oh, I do know 5 who Matt Tropper is, right. I think he was 6 a junior associate. 7 <b>Q. Do you know who Albert Jacobs is?</b> 8 A. Oh, absolutely. 9 <b>Q. Who is he?</b> 10 A. Al is probably the best lawyer I 11 ever worked for in my life. 12 <b>Q. Is he an administrative partner</b> 13 <b>at Greenberg Traurig or --</b> 14 A. He was the head of the IP group 15 when I was hired. 16 <b>Q. So he's an equivalent to Paul</b> 17 <b>Sutton, fair?</b> 18 A. Only in title. 19 <b>Q. What does that mean?</b> 20 A. It means Al forgets more in a day 21 than most people learn in a lifetime. 22 <b>Q. So he would be more senior to</b> 23 <b>Paul with more wide ranging</b> 24 <b>responsibilities at Greenberg Traurig?</b> 25 A. Yeah, I mean Al, honestly, if you</p>
<p style="text-align: right;">Page 155</p> <p>1 T. Sharinn 2 <b>in any training of paralegals with regards</b> 3 <b>to the calculations of maintenance fee</b> 4 <b>payments or docketing maintenance fee</b> 5 <b>payments?</b> 6 A. I have no recollection of it and 7 I can't see why I would have been for a 8 variety of reasons, not the least of which 9 is that the computer program probably did 10 it itself. 11 <b>Q. Well, just as an example, how</b> 12 <b>would you go about docketing the</b> 13 <b>maintenance fee payments for a reissue</b> 14 <b>payment?</b> 15 A. I would walk over to the 16 paralegal and say would you please take 17 care of this. 18 <b>Q. Fair enough.</b> 19 <b>Exhibit 8 does reflect again that</b> 20 <b>the client matter number is the same client</b> 21 <b>matter number that we saw on Exhibit 17,</b> 22 <b>the 51822.0107 matter, right?</b> 23 A. That's what it appears to be. 24 What's interesting, though, is on 25 the first reference I see Paul Sutton as</p>	<p style="text-align: right;">Page 157</p> <p>1 T. Sharinn 2 want to talk about like superstars, I mean, 3 not that Paul was a slouch, Paul's a great 4 attorney, but Al was just amazing. 5 <b>Q. Any reason that you can think of</b> 6 <b>as to why Al is now reflected as one of the</b> 7 <b>attorneys as opposed to Paul Sutton from</b> 8 <b>Exhibit 3 to Exhibit 8?</b> 9 A. Well, I'm looking at a memo 10 there, and it says per conference with Al 11 Jacobs on 4/18/06, he has taken 12 responsibility for the client of Todd 13 Sharinn or the clients that Todd Sharinn 14 worked. 15 It actually kind of answers two 16 questions. The first is you had asked me 17 were matters ever transferred to me at 18 Baker McKenzie and clearly they weren't 19 because here they are. 20 The second is, is that looks like 21 Al took over my stuff, that he just assumed 22 responsibility for him. 23 <b>Q. And my only question and</b> 24 <b>follow-up to that is does this refresh your</b> 25 <b>recollection as to why it is that Alan</b></p>

41 (Pages 158 to 161)

<p style="text-align: right;">Page 158</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>Fell's request for files to be transferred</b></p> <p>3 <b>to you at Baker McKenzie weren't followed?</b></p> <p>4 A. It doesn't -- I mean, it's very</p> <p>5 possible I may have just kind of shrugged</p> <p>6 my shoulders at this point and said please</p> <p>7 don't transfer them, I don't want them</p> <p>8 anymore. And remember, they're the firm's</p> <p>9 clients, not mine. So if I don't want</p> <p>10 them, it's the firm that needs to</p> <p>11 disengage.</p> <p>12 <b>Q. Did you ever have an engagement</b></p> <p>13 <b>agreement with Quickie with regards to any</b></p> <p>14 <b>of its various matters?</b></p> <p>15 A. I must.</p> <p>16 <b>Q. Why do you say that?</b></p> <p>17 A. I just would have assumed I would</p> <p>18 have.</p> <p>19 <b>Q. Do you recall ever having any</b></p> <p>20 <b>engagement agreement with Quickie while at</b></p> <p>21 <b>Pepe &amp; Hazard?</b></p> <p>22 A. I would think I would have, yes,</p> <p>23 sir. I don't have any specific</p> <p>24 recollection, but it's kind of typical.</p> <p>25 Actually, I think in Connecticut</p>	<p style="text-align: right;">Page 160</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>nothing other than this from Greenberg</b></p> <p>3 <b>Taurig.</b></p> <p>4 A. That's possible.</p> <p>5 <b>Q. And that's consistent with what</b></p> <p>6 <b>the intake memorandums say, they say that</b></p> <p>7 <b>it's its existing client, not need for --</b></p> <p>8 A. Like I say, it's not that</p> <p>9 surprising.</p> <p>10 <b>Q. So for some reason an engagement</b></p> <p>11 <b>agreement was prepared.</b></p> <p>12 A. No, it makes perfect sense why it</p> <p>13 would have been done here.</p> <p>14 <b>Q. And why?</b></p> <p>15 A. Proposal for representation, and</p> <p>16 we had met with Steve on a couple of</p> <p>17 occasions at least and talked to him</p> <p>18 several times and Steve wanted a written</p> <p>19 proposal.</p> <p>20 <b>Q. All right.</b></p> <p>21 <b>Do you recall --</b></p> <p>22 A. Actually, I'm not sure Steve</p> <p>23 wanted it. I think Alan may have wanted</p> <p>24 it.</p> <p>25 <b>Q. Alan Fell?</b></p>
<p style="text-align: right;">Page 159</p> <p>1 T. Sharinn</p> <p>2 I must have because if I'm not mistaken,</p> <p>3 under Connecticut law you have to have a</p> <p>4 written agreement.</p> <p>5 <b>Q. Even on hourly representations?</b></p> <p>6 A. I think so. I don't want to say</p> <p>7 for sure. I'm certainly not an authority</p> <p>8 on that kind of stuff.</p> <p>9 <b>Q. Let's go ahead and look at</b></p> <p>10 <b>Exhibit 14. I want to try and talk about</b></p> <p>11 <b>the engagement concerning Medtronic</b></p> <p>12 <b>litigation on the '160 Patent.</b></p> <p>13 <b>I'll represent to you that from</b></p> <p>14 <b>the files that I've looked at, I can't find</b></p> <p>15 <b>any other engagement agreements with</b></p> <p>16 <b>regards to Quickie other than the</b></p> <p>17 <b>engagement letter which is reflected in</b></p> <p>18 <b>Exhibit 14 pertaining to the Medtronic</b></p> <p>19 <b>litigation.</b></p> <p>20 A. So you have nothing from Pepe &amp;</p> <p>21 Hazard?</p> <p>22 <b>Q. No.</b></p> <p>23 A. That's interesting. I don't</p> <p>24 know.</p> <p>25 <b>Q. And more particularly I have</b></p>	<p style="text-align: right;">Page 161</p> <p>1 <b>T. Sharinn</b></p> <p>2 A. Probably, yeah.</p> <p>3 <b>Q. Do you recall whether Steve</b></p> <p>4 <b>Colvin was considering other counsel</b></p> <p>5 <b>besides Greenberg Taurig for the Medtronic</b></p> <p>6 <b>litigation?</b></p> <p>7 A. I think he was.</p> <p>8 <b>Q. Do you recall that he was</b></p> <p>9 <b>considering Mark Evens at that time as a</b></p> <p>10 <b>potential alternative?</b></p> <p>11 A. I think he was.</p> <p>12 <b>Q. Do you recall that it was the</b></p> <p>13 <b>thought or effort of Greenberg Taurig to</b></p> <p>14 <b>persuade Steve to come to Greenberg Taurig</b></p> <p>15 <b>with that litigation in part by including</b></p> <p>16 <b>Paul Sutton as one of the attorneys who</b></p> <p>17 <b>would be working on that matter</b></p> <p>18 <b>specifically?</b></p> <p>19 A. No, that's not why Paul was</p> <p>20 brought in.</p> <p>21 <b>Q. Why was Paul brought in?</b></p> <p>22 A. Because I didn't feel comfortable</p> <p>23 taking on a case of this magnitude without</p> <p>24 senior supervision.</p> <p>25 <b>Q. Did you have any sense that Steve</b></p>

42 (Pages 162 to 165)

<p style="text-align: right;">Page 162</p> <p>1 T. Sharinn</p> <p>2 <b>Colvin wasn't comfortable with you handling</b></p> <p>3 <b>it on your own without somebody like Paul</b></p> <p>4 <b>Sutton?</b></p> <p>5 A. Quite the contrary.</p> <p>6 <b>Q. Can you elaborate on that? Was</b></p> <p>7 <b>there anything specific that gave you that</b></p> <p>8 <b>sense that he was not concerned about that?</b></p> <p>9 A. Yeah. Steve, if I remember</p> <p>10 correctly, had mentioned Mark Evens to me</p> <p>11 because I think at that time he was pending</p> <p>12 nuptials, I'm not sure if he was actually</p> <p>13 married at that point, and actually put</p> <p>14 Mark on the phone, and the way Steve always</p> <p>15 does things, I think he tried to make a</p> <p>16 match between GT and Mark to bring him</p> <p>17 almost in to do it.</p> <p>18 I think Mark may have raised</p> <p>19 concerns that I wasn't gray enough at the</p> <p>20 time to handle it, but if I remember</p> <p>21 correctly, Steve had told me he wasn't too</p> <p>22 worried about it and, you know, he knew</p> <p>23 this was, for lack of a better term, our</p> <p>24 baby.</p> <p>25 We had worked on this from the</p>	<p style="text-align: right;">Page 164</p> <p>1 T. Sharinn</p> <p>2 for it. Whether he billed for the answers</p> <p>3 or not, I don't know.</p> <p>4 <b>Q. Well, let me ask it more</b></p> <p>5 <b>specifically.</b></p> <p>6 <b>Did you anticipate or expect that</b></p> <p>7 <b>Paul Sutton would have an active role in</b></p> <p>8 <b>the argument of the Markman Hearing or the</b></p> <p>9 <b>trial of the case?</b></p> <p>10 A. No. I expected Bill Todd, who</p> <p>11 was a partner at Greenberg at the time and</p> <p>12 who had a significant amount of patent</p> <p>13 litigation experience and real trial</p> <p>14 experience to have argued the Markman</p> <p>15 Hearing, and Bill Todd was supposed to</p> <p>16 argue it up until the Friday before the</p> <p>17 Monday that the hearing proceeded on.</p> <p>18 <b>Q. What happened?</b></p> <p>19 A. Bill Todd had to fly out to</p> <p>20 Arizona for an emergency, and so I prepared</p> <p>21 the argument myself all weekend long and</p> <p>22 argued it, and I guess it worked out okay</p> <p>23 because we had a very good result.</p> <p>24 <b>Q. Similar to the questions that I</b></p> <p>25 <b>asked you in connection with prosecuting a</b></p>
<p style="text-align: right;">Page 163</p> <p>1 T. Sharinn</p> <p>2 beginning, nobody knew it better than me,</p> <p>3 and they had known that I've litigated</p> <p>4 cases already as a first chairman of point.</p> <p>5 Again, I don't think the firm</p> <p>6 would have had a problem with me handling</p> <p>7 this on my own. This was my choice.</p> <p>8 <b>Q. All right.</b></p> <p>9 A. And on a little level, again with</p> <p>10 the partnership in mind, it doesn't hurt to</p> <p>11 have a senior member of the IP group</p> <p>12 gaining by your efforts.</p> <p>13 <b>Q. Did you perceive, did you</b></p> <p>14 <b>anticipate or expect Paul Sutton to take</b></p> <p>15 <b>any active role in the litigation?</b></p> <p>16 A. He did take an active role.</p> <p>17 <b>Q. Well, I understand that he was</b></p> <p>18 <b>involved in some negotiations with the</b></p> <p>19 <b>principals at Medtronic.</b></p> <p>20 A. No. I mean, Paul's door was two</p> <p>21 doors down from mine. You know, I guess</p> <p>22 the way I would describe myself as an</p> <p>23 associate was like the way I expect my</p> <p>24 associates to be with me now. I had a</p> <p>25 question, I walked over and I asked them</p>	<p style="text-align: right;">Page 165</p> <p>1 T. Sharinn</p> <p>2 <b>patent in filing the suit against</b></p> <p>3 <b>Medtronics, you did have in fact a good</b></p> <p>4 <b>faith belief in the suit that was being</b></p> <p>5 <b>filed, correct?</b></p> <p>6 A. Absolutely.</p> <p>7 <b>Q. You satisfied yourself with</b></p> <p>8 <b>regards to Rule 11 obligations that --</b></p> <p>9 A. Oh, absolutely. Mean, let's face</p> <p>10 it, these guys entered into a license</p> <p>11 agreement and then ended the license</p> <p>12 agreement, you know, terminated the</p> <p>13 agreement for whatever reasons and went out</p> <p>14 and marketed a product that was, while it</p> <p>15 may not have been a literally infringement,</p> <p>16 was clearly an equivalent.</p> <p>17 <b>Q. So you did not consider it to be</b></p> <p>18 <b>a frivolous lawsuit?</b></p> <p>19 A. Absolutely not.</p> <p>20 <b>Q. And you would not have pursued it</b></p> <p>21 <b>or filed it, if you hadn't thought so?</b></p> <p>22 A. Absolutely.</p> <p>23 <b>Q. And so while there may have been</b></p> <p>24 <b>warts, since there are in almost all</b></p> <p>25 <b>cases --</b></p>

43 (Pages 166 to 169)

<p style="text-align: right;">Page 166</p> <p>1 T. Sharinn</p> <p>2 A. May have been what?</p> <p>3 <b>Q. Warts, warts -- don't you say it</b></p> <p>4 <b>that way up here?</b></p> <p>5 A. Oh, I gotcha.</p> <p>6 <b>Q. -- on the case in terms of maybe</b></p> <p>7 <b>it's too broad and things of that nature,</b></p> <p>8 <b>you still felt that there was a good faith</b></p> <p>9 <b>basis for bringing a lawsuit?</b></p> <p>10 A. Yeah. I mean, when you bring a</p> <p>11 patent litigation suit, there is at least</p> <p>12 two goals usually. One is, know, you want</p> <p>13 to stop the bleeding, you want to prevent</p> <p>14 them from infringing any further. The</p> <p>15 second is hopefully to recoup some damages.</p> <p>16 On the first front, I absolutely</p> <p>17 felt very strongly that we should be able</p> <p>18 to prevent the bleeding from continuing to</p> <p>19 the level it was, otherwise I would never</p> <p>20 have allowed this suit to progress.</p> <p>21 On the second front, you know, I</p> <p>22 never estimate this to be a very lucrative,</p> <p>23 you know, action and, you know, I made it</p> <p>24 clear to Steve on several occasions that he</p> <p>25 would be foolish if he's doing this for</p>	<p style="text-align: right;">Page 168</p> <p>1 T. Sharinn</p> <p>2 <b>Q. And my question simply is: If</b></p> <p>3 <b>the re-examination of the patent resulted</b></p> <p>4 <b>in the judge, the judge's construction</b></p> <p>5 <b>being applied to the patent or incorporated</b></p> <p>6 <b>in the patent, would that be a good result?</b></p> <p>7 A. If I understand your question</p> <p>8 correctly, you're asking me to extrapolate</p> <p>9 and to say if Judge Lynch's decision was</p> <p>10 adopted by the PTO for re-examination</p> <p>11 purposes, would that have been a good</p> <p>12 result for Quickie?</p> <p>13 <b>Q. Yes.</b></p> <p>14 MR. KAMINSKY: Objection to the</p> <p>15 form of the question.</p> <p>16 THE WITNESS: Can I answer it?</p> <p>17 MR. KAMINSKY: Yes.</p> <p>18 A. Yes.</p> <p>19 <b>Q. And just so we don't waste time,</b></p> <p>20 <b>I just want to be sure, you have not gone</b></p> <p>21 <b>back to look at the final result of the</b></p> <p>22 <b>re-examination, the Patent Office's</b></p> <p>23 <b>decision?</b></p> <p>24 A. Not once.</p> <p>25 <b>Q. The decision that was vacated.</b></p>
<p style="text-align: right;">Page 167</p> <p>1 T. Sharinn</p> <p>2 compensation purposes.</p> <p>3 There are much better ways to go</p> <p>4 about what he was hoping to do than to</p> <p>5 initiate a litigation -- I shouldn't say</p> <p>6 better ways, safer ways, less expensive</p> <p>7 ways than patent infringement litigation,</p> <p>8 if that makes sense.</p> <p>9 <b>Q. If the re-examination of the</b></p> <p>10 <b>patent essentially resulted in the adoption</b></p> <p>11 <b>of the claim construction by Judge Lynch,</b></p> <p>12 <b>would you consider that to be a good</b></p> <p>13 <b>result?</b></p> <p>14 A. Say that one more time? I'm</p> <p>15 trying to even read it and it didn't come</p> <p>16 out quite that clear.</p> <p>17 <b>Q. Let's back up.</b></p> <p>18 <b>You had the Markman Hearing, the</b></p> <p>19 <b>Markman decision came out with a claim</b></p> <p>20 <b>construction for purposes of the patent,</b></p> <p>21 <b>right?</b></p> <p>22 A. Yes, sir.</p> <p>23 <b>Q. And that was a good construction</b></p> <p>24 <b>for Quickie's purposes?</b></p> <p>25 A. It was better than good.</p>	<p style="text-align: right;">Page 169</p> <p>1 T. Sharinn</p> <p>2 A. Not once.</p> <p>3 <b>Q. Okay.</b></p> <p>4 <b>Do you have any intention to</b></p> <p>5 <b>provide any testimony in this litigation</b></p> <p>6 <b>regarding the pending office action and</b></p> <p>7 <b>potential implications with regard to the</b></p> <p>8 <b>patent?</b></p> <p>9 MR. KAMINSKY: Objection to the</p> <p>10 form of the question.</p> <p>11 MR. SCOTT: Let me ask you what I</p> <p>12 got wrong there.</p> <p>13 MR. KAMINSKY: Well, you're</p> <p>14 asking his intention. So I don't</p> <p>15 think that really matters, to tell you</p> <p>16 the truth.</p> <p>17 MR. SCOTT: Well, on a break I'm</p> <p>18 going to ask you whether you intend --</p> <p>19 MR. KAMINSKY: He can answer the</p> <p>20 question, that's fine.</p> <p>21 A. My intention is to finish up here</p> <p>22 and answer all your questions and with a</p> <p>23 little bit of luck to shake your hand and</p> <p>24 say goodbye and maybe meet you in another</p> <p>25 circumstance under better terms. I have no</p>

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<p style="text-align: right;">Page 170</p> <p>1 T. Sharinn</p> <p>2 intention of ever reading that document and</p> <p>3 unless a court orders me to do so, I never</p> <p>4 will. I closed that door a long time ago.</p> <p>5 <b>Q. Well, let's not go down that path</b></p> <p>6 <b>then.</b></p> <p>7 <b>(Exhibit 38, Document, marked for</b></p> <p>8 <b>identification, as of this date.)</b></p> <p>9 <b>Q. I'm going to hand you what's been</b></p> <p>10 <b>marked as Exhibit 38 to your deposition and</b></p> <p>11 <b>I'll give you a second to look at that.</b></p> <p>12 A. I'm sorry, you want me to look at</p> <p>13 38?</p> <p>14 <b>Q. Yes.</b></p> <p>15 A. Sorry about that.</p> <p>16 I'd love to read the redacted</p> <p>17 ones.</p> <p>18 Okay.</p> <p>19 <b>Q. Had you ever heard of</b></p> <p>20 <b>Mr. Sutton's evaluation of you, either</b></p> <p>21 <b>orally or in writing previously?</b></p> <p>22 A. It was shown to me in passing</p> <p>23 once, you know, when I had met with my</p> <p>24 counsel, but I didn't read it the way I</p> <p>25 read it today.</p>	<p style="text-align: right;">Page 172</p> <p>1 T. Sharinn</p> <p>2 <b>Q. And that was because you</b></p> <p>3 <b>requested that and thought it was a good</b></p> <p>4 <b>idea and not because Mr. Sutton insisted on</b></p> <p>5 <b>that?</b></p> <p>6 A. That would be my recollection. I</p> <p>7 mean, I can't say with 100 percent</p> <p>8 certainty that that didn't insist on it,</p> <p>9 but Paul wouldn't be the one at that time</p> <p>10 in my career to have insisted on anything</p> <p>11 like that. It would have been Al Jacobs</p> <p>12 who would have insisted.</p> <p>13 <b>Q. And that wasn't anything to your</b></p> <p>14 <b>recollection that Steve Colvin assisted on?</b></p> <p>15 A. Absolutely not.</p> <p>16 <b>Q. Having a gray hair involved.</b></p> <p>17 A. Steve never asked me for that.</p> <p>18 Remember when I started with Steve I was,</p> <p>19 that was very early in my career.</p> <p>20 <b>Q. And that was my next question, is</b></p> <p>21 <b>that although Mr. Sutton may have helped</b></p> <p>22 <b>you originate the Medtronic litigation, in</b></p> <p>23 <b>other words steer that case to Greenberg</b></p> <p>24 <b>Traurig as opposed to somewhere else, you</b></p> <p>25 <b>had an existing relationship with Quickie</b></p>
<p style="text-align: right;">Page 171</p> <p>1 T. Sharinn</p> <p>2 <b>Q. It's a growing endorsement, is it</b></p> <p>3 <b>not?</b></p> <p>4 A. It's a pretty good evaluation.</p> <p>5 <b>Q. About as good as they get,</b></p> <p>6 <b>reflecting the fact that you had</b></p> <p>7 <b>successfully argued the Markman Hearing,</b></p> <p>8 <b>reflecting that you had the confidence of</b></p> <p>9 <b>your clients and that you had in a sense</b></p> <p>10 <b>your own book of business, right?</b></p> <p>11 A. I think it says something like</p> <p>12 that, yes, sir.</p> <p>13 <b>Q. Just to kind of ask some</b></p> <p>14 <b>questions about this, it says here that</b></p> <p>15 <b>I've worked with Todd on several matters so</b></p> <p>16 <b>far this year, among them a pending</b></p> <p>17 <b>litigation Quickie versus Medtronic, which</b></p> <p>18 <b>I helped him originate.</b></p> <p>19 A. Yes, sir.</p> <p>20 <b>Q. Did he help you originate the</b></p> <p>21 <b>Medtronic litigation?</b></p> <p>22 A. Yes, sir.</p> <p>23 <b>Q. In what way did he help you</b></p> <p>24 <b>originate that matter?</b></p> <p>25 A. We pitched it together.</p>	<p style="text-align: right;">Page 173</p> <p>1 T. Sharinn</p> <p>2 <b>on other matters?</b></p> <p>3 A. I had an existing relationship</p> <p>4 with Steve and with Alan and with Gene.</p> <p>5 <b>Q. With regards to the '160 Patent</b></p> <p>6 <b>as well as other matters?</b></p> <p>7 A. Well, just with those guys with</p> <p>8 regards to various IP matters.</p> <p>9 <b>Q. Have you had, have you ever had</b></p> <p>10 <b>any --</b></p> <p>11 A. Can I have a copy of this for my</p> <p>12 refrigerator? I want to put them next to</p> <p>13 my son's A in math -- I'm just kidding, I'm</p> <p>14 sorry.</p> <p>15 <b>Q. Well, it's good that you would</b></p> <p>16 <b>know this.</b></p> <p>17 A. I wish they told me before I</p> <p>18 left.</p> <p>19 <b>Q. Have you ever, ever, had any</b></p> <p>20 <b>conversation with Steve Colvin where he</b></p> <p>21 <b>told you or expressed in words or effect</b></p> <p>22 <b>that his upset with Greenberg Traurig over</b></p> <p>23 <b>the litigation of the Medtronic case was</b></p> <p>24 <b>that Paul Sutton said he was going to be in</b></p> <p>25 <b>the case and he disappeared from the case?</b></p>

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<p style="text-align: right;">Page 174</p> <p>1 <b>T. Sharinn</b></p> <p>2 A. You know, Steve never said that</p> <p>3 to me, so I don't know that that would be</p> <p>4 the case.</p> <p>5 I think that they were a little</p> <p>6 rattled when Bill Todd didn't make the</p> <p>7 argument and I did. But we talked about it</p> <p>8 and I told him I could get an adjournment</p> <p>9 if they wanted and that I would fully</p> <p>10 respect that and I wouldn't be at all</p> <p>11 insulted since I had never first chaired a</p> <p>12 Markman Hearing prior to that.</p> <p>13 But I also told them that I was</p> <p>14 confident that I could deliver them the</p> <p>15 results that they wanted and I think</p> <p>16 because of the years that we were together</p> <p>17 and the fact that I never blew smoke at</p> <p>18 Steve or anybody else that they trusted me</p> <p>19 and gave me the chance to do it, and</p> <p>20 obviously by the conversations we've had</p> <p>21 today, nobody debates whether or not the</p> <p>22 result was good.</p> <p>23 <b>Q. Nobody does.</b></p> <p>24 A. I think it exceeded expectations</p> <p>25 on all parts.</p>	<p style="text-align: right;">Page 176</p> <p>1 T. Sharinn</p> <p>2 times am I sure I can really do this, and I</p> <p>3 told him yeah.</p> <p>4 I mean, at the end of the day,</p> <p>5 let's understand something, whether Bill</p> <p>6 Todd argued it or I did, I prepared</p> <p>7 everything and I prepared all the</p> <p>8 arguments, and Paul Sutton -- again, I</p> <p>9 don't know what his time entries look like</p> <p>10 on this matter because it's too long ago,</p> <p>11 but Paul would have reviewed documents and</p> <p>12 would have passed on his comments. Paul</p> <p>13 was intimately involved on several</p> <p>14 documents and did a very good job. I</p> <p>15 learned a lot from Mr. Sutton.</p> <p>16 <b>Q. I'm only asking whether you had</b></p> <p>17 <b>obtained any insight into the</b></p> <p>18 <b>disappointment or upset of Steve Colvin</b></p> <p>19 <b>with regards to Paul Sutton?</b></p> <p>20 MR. KAMINSKY: Objection to the</p> <p>21 form of the question.</p> <p>22 A. You know, I think Steve and Alan,</p> <p>23 again, this is where it comes down to if</p> <p>24 I've learned anything, my clients today are</p> <p>25 clients, and while we may be friendly,</p>
<p style="text-align: right;">Page 175</p> <p>1 T. Sharinn</p> <p>2 <b>Q. And I'm trying to take you out of</b></p> <p>3 <b>the equation right now --</b></p> <p>4 A. I understand what you're trying</p> <p>5 to do.</p> <p>6 <b>Q. -- and ask you whether you ever</b></p> <p>7 <b>understood from Steve Colvin that his upset</b></p> <p>8 <b>was not with you, but with Paul Sutton for</b></p> <p>9 <b>promising to be involved in this case and</b></p> <p>10 <b>disappearing from the case?</b></p> <p>11 A. Again, I don't know that I could</p> <p>12 say it any clearer than this. To know</p> <p>13 Steve is to know that Steve is an emotional</p> <p>14 guy. You have to have your Steve Colvin</p> <p>15 filter on if you're going to last with him</p> <p>16 for very long. So you pick up the big</p> <p>17 sound bytes and you disregard the small</p> <p>18 ones.</p> <p>19 I don't have specific</p> <p>20 recollection of him saying what you're</p> <p>21 asking me. I do think that they were a</p> <p>22 little shaken, and I'm not sure it was</p> <p>23 Steve who was shaken so much as Alan Fell.</p> <p>24 And I know that only because Alan, I think,</p> <p>25 was the one who had asked me two or three</p>	<p style="text-align: right;">Page 177</p> <p>1 T. Sharinn</p> <p>2 they're still clients.</p> <p>3 I think the lines blurred a</p> <p>4 little bit with these guys, and it was a</p> <p>5 very, very close relationship between all</p> <p>6 of us, we worked really close and hard</p> <p>7 together, many sleepless nights, the three</p> <p>8 of us. Grassi, too, so the four of us.</p> <p>9 I don't recall Steve objecting to</p> <p>10 Paul's involvement one way or the other. I</p> <p>11 do recall there being a little issue with</p> <p>12 Bill Todd not being there to argue it, and</p> <p>13 I know I was very upset by it.</p> <p>14 But again, if I recall correctly,</p> <p>15 most likely Paul would have asked me are</p> <p>16 you comfortable arguing this or do you want</p> <p>17 me to argue it, and I would have, if I felt</p> <p>18 uncomfortable, asked him to argue it.</p> <p>19 The reason I probably didn't is</p> <p>20 because at that point at Greenberg Traurig</p> <p>21 there wasn't a partner in the IP group</p> <p>22 worldwide, let alone just in New York, who</p> <p>23 didn't have me flying all over the place</p> <p>24 arguing motions for them or taking</p> <p>25 depositions for them. There was not a</p>



46 (Pages 178 to 181)

<p style="text-align: right;">Page 178</p> <p>1 T. Sharinn  2 single one who didn't.  3 So I mean, I kind of prided  4 myself on being the most senior of  5 associates when it came to the litigation,  6 and in many cases being the choice amongst  7 other junior or even mid-level partners  8 being the preference for handling case, and  9 it wasn't only in the IP group, again not  10 to toot my horn, I really don't like doing  11 that, but I did all the litigation for the  12 entertainment group, which was a sizable  13 grouping at Greenberg Traurig and handled a  14 lot of large matters for them.  15 I wasn't uncomfortable making  16 motion practice, and I had been involved in  17 enough Markman hearings as a second chair  18 to know that stepping up to the plate I  19 wasn't scared to swing at the ball.  20 <b>Q. When you learned shortly after</b>  21 <b>getting the result of the Markman Hearing</b>  22 <b>that the matter was being transferred to</b>  23 <b>Thelen Reid and Mark Evens, as you</b>  24 <b>testified, you were upset.</b>  25 <b>Did that color your ability to</b></p>	<p style="text-align: right;">Page 180</p> <p>1 T. Sharinn  2 They've always supported me, and so I  3 wanted to get this in their hands and not  4 handicapped Thelen Reid in any way.  5 On a business level, I know that  6 there was discussion that I was privy to,  7 but not really party to concerning payment  8 of bills and the transfer of files.  9 That all said, if my recollection  10 serves me correctly, and again Paul Sutton  11 would be a better person to ask, we did  12 transfer the files almost immediately upon  13 request.  14 <b>Q. Why do you say Paul Sutton would</b>  15 <b>have been a better person to ask?</b>  16 A. Because he would have handled  17 that situation.  18 <b>Q. Why would he handle it?</b>  19 A. Because he was the partner and I  20 was an associate. It was a billing matter.  21 <b>Q. Oh, the fee issue?</b>  22 A. Yes, sir.  23 <b>Q. I thought you meant the physical</b>  24 <b>transfer of the files.</b>  25 A. No, the physical transfer was</p>
<p style="text-align: right;">Page 179</p> <p>1 T. Sharinn  2 <b>transfer the file in a professional manner?</b>  3 A. Not at all.  4 <b>Q. Do you recall any angst or upset</b>  5 <b>or ill-will or mean-spirited words in</b>  6 <b>connection with the transfer of the files?</b>  7 A. That's not my style.  8 <b>Q. Do you recall any delay or</b>  9 <b>holding back of documents or, you know,</b>  10 <b>slow pedaling the delivery of documents?</b>  11 A. Not that I could recall. In  12 fact, I think it was quite the contrary.  13 My only concern was and I don't  14 recall who made me concerned about this,  15 but I didn't think of this in a business  16 sense. I thought of this in a personal  17 sense. I wanted to just get the documents  18 over to Thelen Reid as quickly as possible  19 for two reasons.  20 Number one, if I'm not going to  21 be responsible, I don't want to be  22 responsible for babysitting it.  23 And number two, because I really  24 cared about these people and if this is  25 what their choice was, I had to support it.</p>	<p style="text-align: right;">Page 181</p> <p>1 T. Sharinn  2 handled by Paul Jergensen, a paralegal that  3 I worked with. He gathered all the files  4 at our instruction and had them sent over.  5 <b>Q. Do you recall any need for Paul</b>  6 <b>Sutton to step in with regard to ensuring</b>  7 <b>that the physical transfer of files was</b>  8 <b>made because of any delay on your part or</b>  9 <b>your office's part?</b>  10 A. Well, my office would have  11 included Paul Sutton because I worked in  12 his office.  13 <b>Q. Well, I meant your secretary or</b>  14 <b>your assistant as opposed to his assistant</b>  15 <b>and his secretary.</b>  16 A. Okay. Let me see if I can answer  17 this as fairly as possible and as maybe  18 more than you're even asking.  19 Yes, I was very upset by having  20 this taken away from me. As I mentioned  21 before, this was Steve's and my baby, not  22 just Steve's.  23 I took a very personal stake in  24 this on a number of levels, not the least  25 of which is that I don't like losing. I've</p>

47 (Pages 182 to 185)

<p style="text-align: right;">Page 182</p> <p>1 T. Sharinn</p> <p>2 never played a game or stepped on a field</p> <p>3 or a rink, whatever, with the intention of</p> <p>4 playing half-hearted. So I put everything</p> <p>5 in it and I sacrificed family and all sorts</p> <p>6 of other stuff to do it.</p> <p>7 When this was taken away, I felt</p> <p>8 cheated because the first period it ended</p> <p>9 and we were winning and I wanted to be</p> <p>10 there for the end of the game.</p> <p>11 That all said, these were very</p> <p>12 important people in my life outside of the</p> <p>13 workforce, and I would never do anything no</p> <p>14 matter how upset I got at my parents or</p> <p>15 sibling or cousin, and that happens from</p> <p>16 time to time. I'm Hungarian, I can't help</p> <p>17 it. I still would never do anything that</p> <p>18 in the long run would jeopardize them or</p> <p>19 their interests.</p> <p>20 So if there was any delay at all,</p> <p>21 and I don't recall there ever having been</p> <p>22 any, I certainly don't recall there being a</p> <p>23 need from any third party to interject</p> <p>24 themselves and to get me to do something</p> <p>25 that I wasn't otherwise doing.</p>	<p style="text-align: right;">Page 184</p> <p>1 T. Sharinn</p> <p>2 which started very, very early in the</p> <p>3 process here, including during the drafting</p> <p>4 of the brief -- I mean of the complaint,</p> <p>5 before even the drafting of the briefs or</p> <p>6 any of the discovery requests, Mark was</p> <p>7 copied on everything.</p> <p>8 So him saying that I slowed files</p> <p>9 to him down is just nonsense because he had</p> <p>10 everything from before I was ever removed</p> <p>11 from this position at all.</p> <p>12 <b>Q. Let's go ahead and look at</b></p> <p>13 <b>Exhibit 22, which was previously marked in</b></p> <p>14 <b>Mr. Sutton's deposition.</b></p> <p>15 A. Okay.</p> <p>16 <b>Q. Dated October 15, 2002, addressed</b></p> <p>17 <b>to you by Alan Fell, right?</b></p> <p>18 A. Yes, sir.</p> <p>19 <b>Q. And concerning the medicine</b></p> <p>20 <b>tonics litigation.</b></p> <p>21 A. Yes, sir.</p> <p>22 <b>Q. And essentially documenting that</b></p> <p>23 <b>the files will be transferred or the case</b></p> <p>24 <b>will be transferred to Thelen Reid, right?</b></p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 183</p> <p>1 T. Sharinn</p> <p>2 Now, if I'm wrong, I apologize,</p> <p>3 but that is my recollection.</p> <p>4 <b>Q. Do you recall Mark Evens having</b></p> <p>5 <b>any angst or upset over not having to file</b></p> <p>6 <b>as quickly as he would like, any</b></p> <p>7 <b>discussions with you directly?</b></p> <p>8 A. With me specifically, not that I</p> <p>9 recall. But I will say this about Mark</p> <p>10 Evens, and I haven't hidden it before, I</p> <p>11 don't really have a great deal of</p> <p>12 appreciation for Mark as an individual</p> <p>13 and/or as a professional.</p> <p>14 I said it before, I don't know</p> <p>15 anybody less qualified to have handled this</p> <p>16 case than Mark Evens who would hold</p> <p>17 themselves out as qualified.</p> <p>18 That all said, I will say another</p> <p>19 thing about Mark Evens. To put it in a</p> <p>20 Latin legal term, the man is an absolute</p> <p>21 weenie, W-E-E-N-I-E. He did everything in</p> <p>22 his power to play little sophomoric games</p> <p>23 to improve his relationships with Colvin.</p> <p>24 So let's understand that from day</p> <p>25 one, even before Mark was riding coattail,</p>	<p style="text-align: right;">Page 185</p> <p>1 T. Sharinn</p> <p>2 <b>Q. And that Thelen Reid will be</b></p> <p>3 <b>substituted in for Greenberg Traurig for</b></p> <p>4 <b>purposes of the litigation?</b></p> <p>5 A. Do you mind if I read this?</p> <p>6 <b>Q. Oh, please.</b></p> <p>7 A. It says that, yes, sir.</p> <p>8 <b>Q. And in the third paragraph, it</b></p> <p>9 <b>states you and Greenberg Traurig will</b></p> <p>10 <b>continue to handle various patent</b></p> <p>11 <b>application pending on behalf of Quickie,</b></p> <p>12 <b>LLC and Quickie Vision, LLC, right?</b></p> <p>13 A. Yes, sir.</p> <p>14 <b>Q. And that was your understanding,</b></p> <p>15 <b>that you would continue on behalf of</b></p> <p>16 <b>Quickie after the substitution of counsel</b></p> <p>17 <b>with regards to the litigation?</b></p> <p>18 MR. KAMINSKY: Objection to the</p> <p>19 form of the question.</p> <p>20 A. No, sir.</p> <p>21 <b>Q. You take issue with the statement</b></p> <p>22 <b>made here?</b></p> <p>23 A. My understanding was that I was</p> <p>24 to transfer all Quickie matters. So when I</p> <p>25 see, and the first time I had ever looked</p>



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<p style="text-align: right;">Page 186</p> <p>1 T. Sharinn</p> <p>2 at this letter in any real meaningful way</p> <p>3 would have been when I met with counsel the</p> <p>4 other day -- and when I saw the Quickie</p> <p>5 LLC -- I think the Quickie Vision makes</p> <p>6 perfect sense, and if it had said S&amp;A</p> <p>7 Rings, that would make perfect sense.</p> <p>8 I suspect that was a typo by</p> <p>9 Mr. Fell -- there would be no reason for me</p> <p>10 to continue prosecuting patents on behalf</p> <p>11 of Quickie because I don't think Quickie</p> <p>12 had any pending patents.</p> <p>13 And so if I had even noticed that</p> <p>14 when the letter was sent to me, I would not</p> <p>15 have said anything about it only because</p> <p>16 what was the point?</p> <p>17 <b>Q. It's kind of, you know -- it's</b></p> <p>18 <b>just, again, talking about taking the high</b></p> <p>19 <b>road, it just didn't make a difference, and</b></p> <p>20 <b>just so we're clear, I don't want to get</b></p> <p>21 <b>into any great detail, as far as you were</b></p> <p>22 <b>concerned, as of this date for sure and</b></p> <p>23 <b>before this date in terms of the call that</b></p> <p>24 <b>was made to you, any and all activity on</b></p> <p>25 <b>behalf of you or Greenberg Traurig with</b></p>	<p style="text-align: right;">Page 188</p> <p>1 T. Sharinn</p> <p>2 But with this one, because of</p> <p>3 what had occurred, there is no way I would</p> <p>4 have engaged in any real meaningful</p> <p>5 conversation without them having engaged me</p> <p>6 to do it, because my understanding was that</p> <p>7 my powers of attorney and my involvement in</p> <p>8 this case were fully revoked. And when I</p> <p>9 say this case, I don't just mean the</p> <p>10 litigation, I mean the 160's existence.</p> <p>11 <b>Q. So that begs the question,</b></p> <p>12 <b>Mr. Sharinn, as to how did you ensure that</b></p> <p>13 <b>that was full legal communicated to your</b></p> <p>14 <b>client, former client, however you want to</b></p> <p>15 <b>describe it, Quickie, LLC that you were</b></p> <p>16 <b>done, over, finite, had no further</b></p> <p>17 <b>responsibility with regards to that patent</b></p> <p>18 <b>in any way, shape or form?</b></p> <p>19 MR. KAMINSKY: I'm just going to</p> <p>20 object to the very beginning of that</p> <p>21 question. I don't object to the</p> <p>22 question part of it, but the phrase</p> <p>23 "so that begs the question" I do</p> <p>24 object to.</p> <p>25 You can answer the question that</p>
<p style="text-align: right;">Page 187</p> <p>1 T. Sharinn</p> <p>2 <b>regards to the '160 Patent was done, over,</b></p> <p>3 <b>finite?</b></p> <p>4 A. By the date of this letter, that</p> <p>5 was my understanding, yes, sir.</p> <p>6 <b>Q. And so any subsequent actions</b></p> <p>7 <b>with regards to the re-examination or the</b></p> <p>8 <b>transfer of powers of attorney or</b></p> <p>9 <b>revocation of Power of Attorney was</b></p> <p>10 <b>essentially noise and of no real</b></p> <p>11 <b>consequence in your mind?</b></p> <p>12 A. I think that noise is a good way</p> <p>13 to describe. I wouldn't say there was no</p> <p>14 consequence. In my mind and in my heart at</p> <p>15 that time there was a hope to get back in</p> <p>16 the game. So if they called me, I was very</p> <p>17 clear to make sure they understood I wasn't</p> <p>18 going to do work without being compensated,</p> <p>19 particularly on this matter.</p> <p>20 I mean, there was no, how do I</p> <p>21 put this -- there was a very open</p> <p>22 relationship between us. On other matters,</p> <p>23 they wanted to bounce something off me and</p> <p>24 say, hey, do you think this is patentable,</p> <p>25 I had asked to set up a new matter.</p>	<p style="text-align: right;">Page 189</p> <p>1 T. Sharinn</p> <p>2 follows that, which is how did you</p> <p>3 communicate this to your client.</p> <p>4 THE WITNESS: Okay.</p> <p>5 MR. SCOTT: And I'm withdraw the</p> <p>6 prelude.</p> <p>7 A. That's fine. Just to answer your</p> <p>8 question, I didn't feel like I needed to</p> <p>9 communicate that fact. They had made this</p> <p>10 abundantly clear to me that that was their</p> <p>11 intention and that was their desire.</p> <p>12 But if for purposes of, as I used</p> <p>13 the term weenie before, famous Latin term,</p> <p>14 I was a weenie, too, and I was not going to</p> <p>15 do work on this, and I made it clear to</p> <p>16 them you fired me, you have new counsel,</p> <p>17 your new counsel is Thelen Reid &amp; Priest,</p> <p>18 you need to take this up with Mark Evens or</p> <p>19 we can be reengage the and then we can deal</p> <p>20 with this.</p> <p>21 So if that's not communication</p> <p>22 enough, then I'm guilty.</p> <p>23 <b>Q. That communication was oral</b></p> <p>24 <b>though, that you've just referred to?</b></p> <p>25 A. As far as I can recall. I mean,</p>

49 (Pages 190 to 193)

<p style="text-align: right;">Page 190</p> <p>1 T. Sharinn</p> <p>2 I might have sent an e-mail, I don't know.</p> <p>3 It wouldn't be beyond me to have sent an</p> <p>4 e-mail or to respond to an e-mail. I mean,</p> <p>5 Steve didn't e-mail. Gene e-mailed at</p> <p>6 times.</p> <p>7 I know Gene was very upset about</p> <p>8 this, Gene Grassi, or at least that's the</p> <p>9 impression I got. Alan, very rarely he</p> <p>10 e-mailed. He was a big fax guy. But I</p> <p>11 would have e-mailed Alan from time to time,</p> <p>12 I would think. I certainly sent him a</p> <p>13 fax -- I don't know.</p> <p>14 <b>Q. You certainly would have sent him</b></p> <p>15 <b>a fax essentially stating what you just</b></p> <p>16 <b>described for the record?</b></p> <p>17 A. If I were going to write</p> <p>18 something. I'm not sure at the time it</p> <p>19 called for that. It seemed pretty clear</p> <p>20 that they did not want me to do anything on</p> <p>21 this. Every time I pushed back and I said</p> <p>22 I'm not going to do this without being</p> <p>23 engaged to do it, then they stopped and we</p> <p>24 went on to something else.</p> <p>25 <b>Q. All right. I just haven't</b></p>	<p style="text-align: right;">Page 192</p> <p>1 T. Sharinn</p> <p>2 was ever done or wasn't. A lot transpired</p> <p>3 a lot of back and forth over the years</p> <p>4 about various things.</p> <p>5 <b>Q. You don't have a specific</b></p> <p>6 <b>recollection at this time of having written</b></p> <p>7 <b>anything?</b></p> <p>8 A. I do not, and I'm not sure that I</p> <p>9 would have, as I said, a moment ago.</p> <p>10 <b>Q. Okay.</b></p> <p>11 A. Don't know that the circumstances</p> <p>12 warranted it.</p> <p>13 <b>Q. Let's go ahead and look at</b></p> <p>14 <b>Exhibit 24, also previously marked in</b></p> <p>15 <b>Mr. Sutton's deposition.</b></p> <p>16 MR. SCOTT: Just so you know, if</p> <p>17 you need to break at any time for your</p> <p>18 call -- let's go ahead and break.</p> <p>19 (Recess taken from 1:13 p.m. to</p> <p>20 1:30 p.m.)</p> <p>21 BY MR. SCOTT:</p> <p>22 <b>Q. Do you have Exhibit 24?</b></p> <p>23 A. I do.</p> <p>24 <b>Q. That's an October 15, 2002 letter</b></p> <p>25 <b>sent by Mr. Sutton to Mr. Evens, correct?</b></p>
<p style="text-align: right;">Page 191</p> <p>1 T. Sharinn</p> <p>2 seen --</p> <p>3 A. No, I'm just saying it's not like</p> <p>4 they said to me, okay, Todd, engage. At</p> <p>5 one point they did say that and if I'm not</p> <p>6 mistaken it filled out, you know, I opened</p> <p>7 up a matter and then nothing ever really</p> <p>8 came of it because it was just a minimal</p> <p>9 amount of work and it was just asking me my</p> <p>10 opinion on the document.</p> <p>11 <b>Q. Let me just make sure, though,</b></p> <p>12 <b>that the record is there that you don't</b></p> <p>13 <b>have any records of your own that haven't</b></p> <p>14 <b>already been produced, that's right, right?</b></p> <p>15 A. Well, I think the question you're</p> <p>16 asking right now is better asked of</p> <p>17 Greenberg Traurig. I don't have any</p> <p>18 records that pertain to this or any other</p> <p>19 matters while I was at Greenberg Traurig</p> <p>20 concerning the Colvin group.</p> <p>21 <b>Q. I just haven't seen anything in</b></p> <p>22 <b>writing along the lines you described. I</b></p> <p>23 <b>just want to make sure that it's not out</b></p> <p>24 <b>there and I just haven't gotten it.</b></p> <p>25 A. Don't know. I don't know if it</p>	<p style="text-align: right;">Page 193</p> <p>1 T. Sharinn</p> <p>2 A. That's what it looks like, yes,</p> <p>3 sir.</p> <p>4 <b>Q. I'll just draw your attention if</b></p> <p>5 <b>I could to the first sentence of the last</b></p> <p>6 <b>paragraph:</b></p> <p>7 <b>"Finally, for the benefit of our</b></p> <p>8 <b>mutual client, Quickie, I'll try to make</b></p> <p>9 <b>myself available to both you and Steve if</b></p> <p>10 <b>you feel like I can be of any help</b></p> <p>11 <b>regarding either the prosecution or the</b></p> <p>12 <b>litigation or any settlement negotiations</b></p> <p>13 <b>that come up."</b></p> <p>14 <b>Do you see that?</b></p> <p>15 A. Yes, sir.</p> <p>16 <b>Q. If you were not working for</b></p> <p>17 <b>Quickie any longer, why is he referring to</b></p> <p>18 <b>Quickie as your mutual client, to your</b></p> <p>19 <b>understanding?</b></p> <p>20 A. Again, I think the lines are</p> <p>21 blurred between the name of Colvin's</p> <p>22 various groups and Colvin himself. I think</p> <p>23 he's probably, and again, this is something</p> <p>24 you need to ask Paul, he wrote the letter,</p> <p>25 but if I were to look at this, I wouldn't</p>

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<p style="text-align: right;">Page 194</p> <p>1 T. Sharinn</p> <p>2 even think of it that way. I would just</p> <p>3 think of it as we're referring to Steve</p> <p>4 Colvin, et al.</p> <p>5 <b>Q. Just so we're clear, did you not</b></p> <p>6 <b>consider Quickie to be your client any</b></p> <p>7 <b>longer as of October 15, 2002?</b></p> <p>8 A. It's a long time ago, but yeah,</p> <p>9 that's my recollection.</p> <p>10 <b>Q. That's your testimony?</b></p> <p>11 A. Well, it's my testimony because</p> <p>12 it's on the transcript, but yes, that's my</p> <p>13 recollection.</p> <p>14 <b>Q. And so to the extent that Paul</b></p> <p>15 <b>understood that that was not, that was not</b></p> <p>16 <b>an understanding that you shared with them?</b></p> <p>17 A. Say that again.</p> <p>18 <b>Q. To the extent that Paul</b></p> <p>19 <b>understood that Quickie was still a client</b></p> <p>20 <b>of the firm Greenberg Traurig, that was not</b></p> <p>21 <b>an understanding that you shared with him?</b></p> <p>22 MR. KAMINSKY: Objection to the</p> <p>23 form of the question.</p> <p>24 A. I don't know what Paul thought,</p> <p>25 and I never discussed it with Paul, to my</p>	<p style="text-align: right;">Page 196</p> <p>1 T. Sharinn</p> <p>2 A. That's what it says.</p> <p>3 <b>Q. And then attached to that yet on</b></p> <p>4 <b>the next page is his actual cover sheet</b></p> <p>5 <b>which he refers to in his October 16th</b></p> <p>6 <b>letter, which encloses files with regards</b></p> <p>7 <b>to the Quickie Medtronic litigation matter,</b></p> <p>8 <b>and it delineates the items enclosed,</b></p> <p>9 <b>right?</b></p> <p>10 A. It does purport to do that, yes,</p> <p>11 sir.</p> <p>12 <b>Q. Did you participate at all with</b></p> <p>13 <b>Mr. Jergensen in compiling those records</b></p> <p>14 <b>for transfer?</b></p> <p>15 A. I don't recall. I doubt it.</p> <p>16 <b>Q. It makes no mention in this</b></p> <p>17 <b>letter of any deadlines that are coming up</b></p> <p>18 <b>or any of the docketing entries that</b></p> <p>19 <b>Greenberg had at the time with regards to</b></p> <p>20 <b>the maintenance fee payments, does it?</b></p> <p>21 MR. KAMINSKY: Objection to the</p> <p>22 form of the question.</p> <p>23 A. Why would it?</p> <p>24 <b>Q. I'm just asking a question.</b></p> <p>25 A. I mean, the letter says what it</p>
<p style="text-align: right;">Page 195</p> <p>1 T. Sharinn</p> <p>2 recollection.</p> <p>3 <b>Q. Okay.</b></p> <p>4 <b>If you could look at Exhibit 25,</b></p> <p>5 <b>also previously marked.</b></p> <p>6 A. Yes, sir, okay.</p> <p>7 <b>Q. I am kind of running through</b></p> <p>8 <b>these kind of quick.</b></p> <p>9 A. I appreciate that.</p> <p>10 <b>Q. This is a transmittal cover sheet</b></p> <p>11 <b>from Greenberg Traurig to Dr. Colvin from</b></p> <p>12 <b>the person you name Paul Jergensen.</b></p> <p>13 A. Paul Jergensen.</p> <p>14 <b>Q. Who was, as I understand it, a</b></p> <p>15 <b>Greenberg Traurig paralegal?</b></p> <p>16 A. Yeah. He's terrific.</p> <p>17 <b>Q. All right.</b></p> <p>18 <b>And attached to it on the second</b></p> <p>19 <b>page is an October 16th letter that he is</b></p> <p>20 <b>sending to Shari Markovitz-Savit at Thelen</b></p> <p>21 <b>Reid, right?</b></p> <p>22 A. That's what it says, yes, sir.</p> <p>23 <b>Q. Under the reference of Quickie</b></p> <p>24 <b>and Medtronic litigation the 0104 matter,</b></p> <p>25 <b>right?</b></p>	<p style="text-align: right;">Page 197</p> <p>1 T. Sharinn</p> <p>2 says, yes, sir.</p> <p>3 <b>Q. And you'll confirm that it has no</b></p> <p>4 <b>mention of any of the docketing entries or</b></p> <p>5 <b>maintenance fee payments deadlines?</b></p> <p>6 A. I don't see anything in the</p> <p>7 letter referring to that.</p> <p>8 MR. KAMINSKY: Objection to the</p> <p>9 form of the question. The witness</p> <p>10 answered before I could note my</p> <p>11 objection for the record.</p> <p>12 BY MR. SCOTT:</p> <p>13 <b>Q. And just so we're clear, the</b></p> <p>14 <b>letters on their face are only transferring</b></p> <p>15 <b>files with respect to the Quickie 0104</b></p> <p>16 <b>matter, which is the Medtronic litigation,</b></p> <p>17 <b>correct?</b></p> <p>18 MR. KAMINSKY: Objection to the</p> <p>19 form of the question.</p> <p>20 A. On its face, that would be what</p> <p>21 it says, yes, but that's because Paul is a</p> <p>22 litigation paralegal. He wouldn't even</p> <p>23 know the first thing about a patent</p> <p>24 prosecution matter.</p> <p>25 <b>Q. Well, he knew enough to refer to</b></p>

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<p style="text-align: right;">Page 198</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>the client matter number which pertained to</b></p> <p>3 <b>that litigation and that litigation alone,</b></p> <p>4 <b>right?</b></p> <p>5 A. That's what he was asked to send</p> <p>6 over, I'm assuming, but I also see number 5</p> <p>7 on your list items now that I'm looking at</p> <p>8 it more closely, and number 4, which would</p> <p>9 have had all to do with prosecution and</p> <p>10 nothing to do with litigation.</p> <p>11 <b>Q. Well, but the prosecution file</b></p> <p>12 <b>does relate to the litigation?</b></p> <p>13 A. I don't want to debate this with</p> <p>14 you. You asked me a question and I'm</p> <p>15 giving you a full answer.</p> <p>16 <b>Q. If you disagree with me --</b></p> <p>17 A. I disagree with you.</p> <p>18 <b>Q. Let's back up.</b></p> <p>19 A. No, I'll answer your question</p> <p>20 very succinctly.</p> <p>21 There would be no reason to send</p> <p>22 item number 5 in particular unless we were</p> <p>23 transferring the prosecution files,</p> <p>24 otherwise we wouldn't have them. You asked</p> <p>25 us for the 160 file history and prior art.</p>	<p style="text-align: right;">Page 200</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>matters are available to successor counsel?</b></p> <p>3 MR. KAMINSKY: Objection to the</p> <p>4 form of the question.</p> <p>5 BY MR. SCOTT:</p> <p>6 <b>Q. That would be standard practice,</b></p> <p>7 <b>would it not?</b></p> <p>8 MR. KAMINSKY: Objection to the</p> <p>9 form of the question.</p> <p>10 A. It would be, but they would have</p> <p>11 been covered under number 13, and they</p> <p>12 would have been covered under number 12 and</p> <p>13 they would have been covered under number</p> <p>14 16 and they would have been covered under</p> <p>15 number 17. There would be no reason to</p> <p>16 make a separate point of putting that in</p> <p>17 there.</p> <p>18 <b>Q. The file wrapper is not something</b></p> <p>19 <b>separate and apart from documents produced</b></p> <p>20 <b>by Quickie and documents produced by</b></p> <p>21 <b>Medtronic?</b></p> <p>22 A. It is something separate and</p> <p>23 apart, because the documents, as part of</p> <p>24 the production, would have been the file</p> <p>25 wrapper that was not attorney-client</p>
<p style="text-align: right;">Page 199</p> <p>1 T. Sharinn</p> <p>2 That's exactly what it is. That's the file</p> <p>3 wrapper.</p> <p>4 <b>Q. Have you ever undertaken a patent</b></p> <p>5 <b>litigation without getting the file</b></p> <p>6 <b>wrapper?</b></p> <p>7 A. Of course not, but that would be</p> <p>8 our file right there, that's what we're</p> <p>9 sending them.</p> <p>10 <b>Q. You must look at in connection</b></p> <p>11 <b>with any enforcement litigation, is it not?</b></p> <p>12 A. Not when it's your personal file,</p> <p>13 you could get that from the PTO if you're</p> <p>14 defending or prosecuting depending upon</p> <p>15 where you fall in the V, but in this</p> <p>16 particular instance, it makes perfect sense</p> <p>17 to me that that's what was being sent over</p> <p>18 there. Paul didn't even know it himself.</p> <p>19 I'm sorry. I mean, you're asking me a</p> <p>20 question, I'm giving you an answer.</p> <p>21 <b>Q. And all I want to make clear, and</b></p> <p>22 <b>if you disagree, you disagree, that for</b></p> <p>23 <b>purposes of a litigation it would be</b></p> <p>24 <b>appropriate to send over the file wrapper</b></p> <p>25 <b>and the prosecution file so that those</b></p>	<p style="text-align: right;">Page 201</p> <p>1 T. Sharinn</p> <p>2 privilege.</p> <p>3 <b>Q. The file wrapper would include</b></p> <p>4 <b>discovery?</b></p> <p>5 A. The file -- let's understand</p> <p>6 something. In the file wrapper, there's 3</p> <p>7 folds in it. There is the center fold,</p> <p>8 which has the correspondence from the PTO</p> <p>9 and to the PTO on the right side in my</p> <p>10 files, at least there is correspondence</p> <p>11 between the client and yourself.</p> <p>12 On the left side there is prior</p> <p>13 art and other underlying information that</p> <p>14 was required in either the drafting of the</p> <p>15 prosecution of the actual patent. Some of</p> <p>16 that stuff is discoverable or producible</p> <p>17 and some of it is not.</p> <p>18 If you're making a production of</p> <p>19 all of this stuff here for purposes of a</p> <p>20 litigation, you would produce all of this.</p> <p>21 If you're producing, if you're</p> <p>22 sending over all your documents that relate</p> <p>23 to that client in a patent litigation, and</p> <p>24 if you were the one who had ultimately</p> <p>25 prosecuted that matter, you'd be sending</p>

52 (Pages 202 to 205)

<p style="text-align: right;">Page 202</p> <p>1 T. Sharinn</p> <p>2 over, you know, if you're sending over the</p> <p>3 prosecution materials you're sending over</p> <p>4 the prosecution materials.</p> <p>5 There would be no reason to set</p> <p>6 up a separate category because all the</p> <p>7 relevant documents would be under 13 for</p> <p>8 the litigation. These other documents</p> <p>9 would include documents that wouldn't have</p> <p>10 been produced under 13 and you're sending</p> <p>11 that over because they need to be able to</p> <p>12 mount it or the application, they're taking</p> <p>13 responsibility for this, like you asked me</p> <p>14 when I read this do I see --</p> <p>15 <b>Q. That's all I can do is ask you</b></p> <p>16 <b>what you understand this to be.</b></p> <p>17 A. That's my understanding when I</p> <p>18 look at it today. What my understanding</p> <p>19 was on October 16, 2002, I don't even know</p> <p>20 where I was on October 16, 2002. I'm sure</p> <p>21 I was somewhere outside of Paul Jergensen's</p> <p>22 office, but who knows.</p> <p>23 <b>Q. You are not transferring the</b></p> <p>24 <b>files with regards to any re-examination</b></p> <p>25 <b>proceedings at that point in time, were</b></p>	<p style="text-align: right;">Page 204</p> <p>1 T. Sharinn</p> <p>2 told today.</p> <p>3 <b>Q. And the 0108 is one of the</b></p> <p>4 <b>Quickie intake matters that we looked at</b></p> <p>5 <b>previously, right?</b></p> <p>6 A. Right, but we also discussed that</p> <p>7 it was very possible that it was put into</p> <p>8 the wrong group.</p> <p>9 <b>Q. But for the client, you're</b></p> <p>10 <b>referring to it as a Quickie matter by way</b></p> <p>11 <b>of the Greenberg Traurig billing entry,</b></p> <p>12 <b>right?</b></p> <p>13 MR. KAMINSKY: Objection to the</p> <p>14 form of the question.</p> <p>15 MR. SCOTT: Yeah, that's a bad</p> <p>16 question.</p> <p>17 BY MR. SCOTT:</p> <p>18 <b>Q. For the client's purposes in</b></p> <p>19 <b>receiving this letter, he is seeing your</b></p> <p>20 <b>reference which is the Quickie client</b></p> <p>21 <b>matter --</b></p> <p>22 A. Okay, let me answer this, if</p> <p>23 Steve were alive today and you said to</p> <p>24 Steve, Steve does the number 51822 have any</p> <p>25 significance to you, Steve wouldn't be able</p>
<p style="text-align: right;">Page 203</p> <p>1 T. Sharinn</p> <p>2 you?</p> <p>3 A. I don't think there were any at</p> <p>4 that point, were there? We wouldn't</p> <p>5 transfer files for that because we weren't</p> <p>6 handling that. We're not the attorneys of</p> <p>7 record for the re-examination as far as I</p> <p>8 know. I don't recall ever being that. I</p> <p>9 may be wrong again.</p> <p>10 (Exhibit 39, Letter, marked for</p> <p>11 identification, as of this date.)</p> <p>12 <b>Q. Would you identify that for the</b></p> <p>13 <b>record, please?</b></p> <p>14 A. It's a letter to Steve Colvin</p> <p>15 dated January 29, 2003 and since we're</p> <p>16 making a big thing about who the letter is</p> <p>17 to, it's not to Quickie, LLC, it's not to</p> <p>18 any of the ring companies like S&amp;A, not to</p> <p>19 Quickie Endoscope.</p> <p>20 It's to Stephen Colvin at his</p> <p>21 office at NYU and it's regarding a nonslip</p> <p>22 surgical inside straight.</p> <p>23 <b>Q. Which happens to bear the Quickie</b></p> <p>24 <b>client number, does it not, 51822?</b></p> <p>25 A. Yes, sir, that's what I've been</p>	<p style="text-align: right;">Page 205</p> <p>1 T. Sharinn</p> <p>2 to tell you, and I can tell you undoubtedly</p> <p>3 I'll testify anywhere to that --</p> <p>4 <b>Q. I beg to differ, it would matter</b></p> <p>5 <b>to him today.</b></p> <p>6 A. Well, only if you coached him</p> <p>7 enough to remember that and he actually</p> <p>8 listened to you and paid attention to you</p> <p>9 and then chose to say it.</p> <p>10 And I will notice another thing,</p> <p>11 it says dictated but not read in bold</p> <p>12 italics at the bottom. So I wouldn't have</p> <p>13 even known whether or not this was the</p> <p>14 right number on it and I notice that my</p> <p>15 former assistant Adrienne Ivan is the one</p> <p>16 who signed this.</p> <p>17 <b>Q. Who you don't want to vouch for?</b></p> <p>18 A. I wouldn't vouch for Adrienne on</p> <p>19 her own birthday.</p> <p>20 <b>Q. What success are you referring to</b></p> <p>21 <b>here, if you can recall?</b></p> <p>22 A. I honestly don't know. So it</p> <p>23 sounds to me like this may have been one of</p> <p>24 the days where Steve liked Thelen Reid and</p> <p>25 had something positive to say about them,</p>

53 (Pages 206 to 209)

<p style="text-align: right;">Page 206</p> <p>1 T. Sharinn</p> <p>2 and so, again, I told you, I tried to</p> <p>3 always take the high road on things, I</p> <p>4 congratulated him on it. I don't know what</p> <p>5 else you'd say to somebody under those</p> <p>6 circumstances.</p> <p>7 (Exhibit 40, Letter, marked for</p> <p>8 identification, as of this date.)</p> <p>9 <b>Q. Let's look at what's been marked</b></p> <p>10 <b>as Exhibit 40 to your deposition. If you</b></p> <p>11 <b>could identify that?</b></p> <p>12 A. This is another letter just to</p> <p>13 Steve Colvin, not to Quickie or S&amp;A Rings</p> <p>14 or anybody else, talking about the</p> <p>15 concentric passive knotless suture</p> <p>16 terminator. This one was not dictated, but</p> <p>17 not read. So apparently I did sign and</p> <p>18 read this one.</p> <p>19 <b>Q. And that also bears a Quickie</b></p> <p>20 <b>client and matter number, correct?</b></p> <p>21 A. This is what I'm told.</p> <p>22 <b>Q. Well, it's not only what you're</b></p> <p>23 <b>told --</b></p> <p>24 A. I think I've also testified --</p> <p>25 no, no, we've been over this several times.</p>	<p style="text-align: right;">Page 208</p> <p>1 T. Sharinn</p> <p>2 it is clearly just a letter to him and it</p> <p>3 talks about again the concentric passive</p> <p>4 knotless suture. In this case, we're</p> <p>5 advising them that the patent has been</p> <p>6 issued. I guess I got him more patents</p> <p>7 than I thought I did.</p> <p>8 <b>Q. What is the date of that letter,</b></p> <p>9 <b>please?</b></p> <p>10 A. 2003, December 2nd.</p> <p>11 <b>Q. Understand all the</b></p> <p>12 <b>qualifications, it likewise bears a Quickie</b></p> <p>13 <b>client matter number, correct?</b></p> <p>14 A. Yes, sir.</p> <p>15 <b>Q. Let me go ahead and ask you to</b></p> <p>16 <b>look at what is Exhibit 26 previously</b></p> <p>17 <b>marked in Mr. Sutton's deposition?</b></p> <p>18 A. Just so you understand, what is</p> <p>19 being shown here -- may I show you</p> <p>20 something because maybe you'd like to see</p> <p>21 it.</p> <p>22 This letter that was, I guess,</p> <p>23 marked Exhibit 44 to Alan Fell is to S&amp;A</p> <p>24 Rings, again with the reference number that</p> <p>25 you're saying is for Quickie.</p>
<p style="text-align: right;">Page 207</p> <p>1 T. Sharinn</p> <p>2 It's not going to change, you may like it</p> <p>3 to, but it won't --</p> <p>4 <b>Q. Let me just finish the question.</b></p> <p>5 A. Sorry.</p> <p>6 <b>Q. -- that the 51822 is the client</b></p> <p>7 <b>matter number at Greenberg Traurig for</b></p> <p>8 <b>Quickie, LLC, right?</b></p> <p>9 A. Absolutely. Don't know that</p> <p>10 that's the correct assignment of the</p> <p>11 matter, though, and so I'm going to tell</p> <p>12 you right now, you can ask me this, you</p> <p>13 know, for as long as you'd like, I have no</p> <p>14 idea whether this was or was not a Quickie</p> <p>15 matter. I would tend to doubt it was.</p> <p>16 (Exhibit 41, Letter, marked for</p> <p>17 identification, as of this date.)</p> <p>18 <b>Q. Let me hand you what's marked as</b></p> <p>19 <b>Exhibit 41 to your deposition.</b></p> <p>20 <b>Could you identify that for the</b></p> <p>21 <b>record, please?</b></p> <p>22 A. Looks like I did pretty good</p> <p>23 here. It's a letter to Dr. Colvin again,</p> <p>24 not to Quickie or anybody else, and I'm</p> <p>25 sorry to make a joke of this, but I mean,</p>	<p style="text-align: right;">Page 209</p> <p>1 T. Sharinn</p> <p>2 <b>Q. Right.</b></p> <p>3 A. Okay. So that's what I'm saying,</p> <p>4 that these get confused a lot and that</p> <p>5 people just use the same number. It's not</p> <p>6 unlikely for Ms. Ivan to have just cut and</p> <p>7 paste a new body into an old letter.</p> <p>8 <b>Q. Make no mistake, and I'm not</b></p> <p>9 <b>trying to play games, it's very clear that</b></p> <p>10 <b>there was, I don't want to call it a</b></p> <p>11 <b>Chinese menu, but it borders on somewhat</b></p> <p>12 <b>indiscriminate use of billing numbers.</b></p> <p>13 A. I don't disagree at all.</p> <p>14 MR. KAMINSKY: And names. So</p> <p>15 long as we agree on that, we can save</p> <p>16 ourselves a lot of questions.</p> <p>17 I think all Mr. Sharinn has been</p> <p>18 trying to say to you is that we used</p> <p>19 the name Quickie as a shorthand but</p> <p>20 that some of these things were</p> <p>21 actually for S&amp;A Rings rather than the</p> <p>22 Quickie entity or vice versa, but</p> <p>23 internally we just referred to that as</p> <p>24 a Quickie matter.</p> <p>25 Is that right.</p>



54 (Pages 210 to 213)

<p style="text-align: right;">Page 210</p> <p>1 T. Sharinn</p> <p>2 THE WITNESS: That's correct.</p> <p>3 And hours ago I had said that the</p> <p>4 concentric passive knotless would not</p> <p>5 in my recollection have fallen into</p> <p>6 the Quickie domain, it would have</p> <p>7 fallen into S&amp;A Rings, and lo and</p> <p>8 behold, Exhibit 44 I guess from</p> <p>9 Mr. Sutton's deposition would bear out</p> <p>10 that fact.</p> <p>11 MR. KAMINSKY: And if you go back</p> <p>12 and you look as you showed before in</p> <p>13 the exhibits, when you have the intake</p> <p>14 memo from this concentric passive</p> <p>15 knotless suture terminator, it says</p> <p>16 address Quickie. We all know that</p> <p>17 that particular device was one for S&amp;A</p> <p>18 Rings as shown by this letter to</p> <p>19 Mr. Fell.</p> <p>20 Correct, Mr. Sharinn.</p> <p>21 THE WITNESS: Yes, sir.</p> <p>22 BY MR. SCOTT:</p> <p>23 <b>Q. And I'm not disputing that there</b></p> <p>24 <b>was a somewhat haphazard use of some of the</b></p> <p>25 <b>number for some of the claim matter numbers</b></p>	<p style="text-align: right;">Page 212</p> <p>1 T. Sharinn</p> <p>2 <b>2003 sent by you to Dr. Colvin, not to</b></p> <p>3 <b>Quickie.</b></p> <p>4 A. Yes, sir.</p> <p>5 <b>Q. All right.</b></p> <p>6 <b>Regarding the Quickie Medtronic</b></p> <p>7 <b>litigation, right?</b></p> <p>8 A. Among other things, yes, sir.</p> <p>9 <b>Q. Well, it addresses some</b></p> <p>10 <b>personal --</b></p> <p>11 A. Yeah, I mean, first and foremost</p> <p>12 it talks about, you know, at that time he</p> <p>13 had quoted me in the New England Journal of</p> <p>14 Medicine.</p> <p>15 I was having issued with my</p> <p>16 ex-wife and it had dealt with the effects</p> <p>17 of cartoons on children of all things,</p> <p>18 because I'm not a big proponent of</p> <p>19 cartoons, and she used the TV as basically</p> <p>20 a babysitter at times.</p> <p>21 And then it goes on to talking</p> <p>22 about whether or not certain items were not</p> <p>23 included in the materials that were</p> <p>24 forwarded over to Thelen Reid and, I</p> <p>25 remember this actually specifically because</p>
<p style="text-align: right;">Page 211</p> <p>1 T. Sharinn</p> <p>2 <b>and the various entities within the Colvin</b></p> <p>3 <b>group.</b></p> <p>4 <b>What I am trying to show again,</b></p> <p>5 <b>just to put it out there, is that there</b></p> <p>6 <b>were also times when you knew what you were</b></p> <p>7 <b>using it for and you used it consistently,</b></p> <p>8 <b>whether it was for the litigation in the</b></p> <p>9 <b>0104 or for the re-examination in the 0109</b></p> <p>10 <b>or with regards to the 0107 matter.</b></p> <p>11 MR. KAMINSKY: I think the</p> <p>12 witness has been trying to tell you</p> <p>13 that it wasn't used consistently and</p> <p>14 that he didn't pay attention to those</p> <p>15 references.</p> <p>16 Is that correct, Mr. Sharinn.</p> <p>17 THE WITNESS: Yes, sir.</p> <p>18 MR. SCOTT: I understand the</p> <p>19 testimony.</p> <p>20 A. Do you want me to talk to Number</p> <p>21 26, Exhibit 26?</p> <p>22 <b>Q. Yes, that's where we are, thank</b></p> <p>23 <b>you for bringing me back to the question.</b></p> <p>24 A. My pleasure, glad to help.</p> <p>25 <b>Q. This is a letter dated March 11,</b></p>	<p style="text-align: right;">Page 213</p> <p>1 T. Sharinn</p> <p>2 I personally rolled up my sleeves and</p> <p>3 helped look for these materials, these</p> <p>4 items.</p> <p>5 They were prototypes to an</p> <p>6 invention that both Mr. Katz had made and</p> <p>7 Dr. Colvin, you know, they had worked</p> <p>8 together to create these little metal locks</p> <p>9 that would lock onto the sutures, and I'm</p> <p>10 not going to lie, I didn't take a little</p> <p>11 bit of unfortunate pleasure in the fact</p> <p>12 that, once again, Thelen Reid had dropped</p> <p>13 the ball.</p> <p>14 I mean, this is great evidence of</p> <p>15 the fact that Thelen Reid didn't really pay</p> <p>16 a lot of attention to this case, and if it</p> <p>17 did, then I'm not sure what they were</p> <p>18 thinking when they did certain things -- I</p> <p>19 mean, this is evidence, and you lose that.</p> <p>20 You're a litigator, have you ever</p> <p>21 lost the evidence?</p> <p>22 <b>Q. I'm not going to answer the</b></p> <p>23 <b>question, Mr. Sharinn.</b></p> <p>24 A. I know I've never lost a piece of</p> <p>25 evidence.</p>

55 (Pages 214 to 217)

<p style="text-align: right;">Page 214</p> <p>1 T. Sharinn</p> <p>2 <b>Q. Let me ask you to direct your</b></p> <p>3 <b>attention to Exhibit 28 also previously</b></p> <p>4 <b>marked.</b></p> <p>5 A. Not 27?</p> <p>6 <b>Q. Not 27.</b></p> <p>7 A. Will you need 27?</p> <p>8 <b>Q. No.</b></p> <p>9 A. Okay, I'm there.</p> <p>10 <b>Q. This is an e-mail exchange</b></p> <p>11 <b>between you and Mr. Sutton, correct?</b></p> <p>12 A. Yes, sir.</p> <p>13 <b>Q. Regarding the re-examination</b></p> <p>14 <b>papers for the Quickie '160 Patent, right?</b></p> <p>15 A. Yes, sir.</p> <p>16 <b>Q. I don't know if you looked at</b></p> <p>17 <b>this before, but it basically looks like an</b></p> <p>18 <b>office action?</b></p> <p>19 A. I remember it like it was</p> <p>20 yesterday.</p> <p>21 <b>Q. Well, what do you remember about</b></p> <p>22 <b>it?</b></p> <p>23 A. I remember this was one of those</p> <p>24 days where I wasn't congratulating Steve</p> <p>25 for the great work that Thelen was doing.</p>	<p style="text-align: right;">Page 216</p> <p>1 T. Sharinn</p> <p>2 A. No problem.</p> <p>3 <b>Q. This one is dated an e-mail from</b></p> <p>4 <b>Ms. Dawkins, who I understand to be Paul's</b></p> <p>5 <b>secretary or former secretary dated March</b></p> <p>6 <b>18th of 2004. And it looks like Mr. Fell</b></p> <p>7 <b>is leaving a voicemail for Mr. Sutton to</b></p> <p>8 <b>call him back to discuss the status of the</b></p> <p>9 <b>160, right?</b></p> <p>10 A. Yeah.</p> <p>11 <b>Q. He referenced, and this is the</b></p> <p>12 <b>only reason I ask you --</b></p> <p>13 A. It looks like he's calling him</p> <p>14 subsequent to speaking to me.</p> <p>15 <b>Q. Well, I didn't say that he was</b></p> <p>16 <b>calling.</b></p> <p>17 A. Oh, I'm sorry.</p> <p>18 <b>Q. He references a conversation with</b></p> <p>19 <b>you earlier in the week.</b></p> <p>20 <b>Do you recall that conversation?</b></p> <p>21 A. I don't recall the conversation</p> <p>22 specifically, but it doesn't surprise me</p> <p>23 that I would have had a conversation with</p> <p>24 Alan.</p> <p>25 <b>Q. And was it pretty much the same</b></p>
<p style="text-align: right;">Page 215</p> <p>1 T. Sharinn</p> <p>2 Rather, I was calming him down because he</p> <p>3 was really upset and he needed some</p> <p>4 explanation on these papers and</p> <p>5 unfortunately they weren't able to explain</p> <p>6 it in terms that he comprehended.</p> <p>7 So I remember him asking me to</p> <p>8 look at these papers and me telling him</p> <p>9 that I needed to get permission and me also</p> <p>10 thinking to myself okay, maybe it's a</p> <p>11 chance to get back in and sending it off to</p> <p>12 Paul saying do you have time to discuss,</p> <p>13 because I would not normally bother Paul</p> <p>14 just because someone called me to talk</p> <p>15 about something, but in this instance I</p> <p>16 felt this was a great opportunity for him</p> <p>17 and me to call Steve together.</p> <p>18 <b>Q. And did that happen?</b></p> <p>19 A. I don't recall that happening. I</p> <p>20 think what ultimately happened is we</p> <p>21 punted. We decided we didn't want to get</p> <p>22 involved at this point.</p> <p>23 <b>Q. If you could look at Exhibit 29,</b></p> <p>24 <b>and it's out of chronological order so I</b></p> <p>25 <b>just draw your attention to that.</b></p>	<p style="text-align: right;">Page 217</p> <p>1 T. Sharinn</p> <p>2 <b>as what came out later, about two weeks</b></p> <p>3 <b>later in connection with the re-examination</b></p> <p>4 <b>office action that was forwarded to you,</b></p> <p>5 <b>which is Exhibit 28?</b></p> <p>6 A. Do you mind if I look at Exhibit</p> <p>7 28 for a minute?</p> <p>8 <b>Q. Sure, sure. If there's no</b></p> <p>9 <b>connection, just say so. That's what I'm</b></p> <p>10 <b>going to try and find out for you right</b></p> <p>11 <b>now. I'm not sure that there is a</b></p> <p>12 <b>connection.</b></p> <p>13 A. The reason that I say that is</p> <p>14 when I look at Thelen Reid's cover letter,</p> <p>15 it's April 2nd and this message is left on</p> <p>16 the 18th. So I'm not sure how he could</p> <p>17 have spoken to me about something that</p> <p>18 didn't occur.</p> <p>19 The only thing is when I look at</p> <p>20 the office action, it predates this by</p> <p>21 quite a few dates?</p> <p>22 <b>Q. And as a patent attorney, do you</b></p> <p>23 <b>sometimes get advanced notice of what's</b></p> <p>24 <b>coming down the pipe?</b></p> <p>25 A. Not really, especially back then</p>



56 (Pages 218 to 221)

<p style="text-align: right;">Page 218</p> <p>1 T. Sharinn</p> <p>2 from the PTO, they weren't very good about</p> <p>3 anything with regards to communication.</p> <p>4 Today, they're a little better,</p> <p>5 but not, still wouldn't get rave reviews.</p> <p>6 But it's very possible that Alan had called</p> <p>7 me only because he had a conversation with</p> <p>8 Steve.</p> <p>9 Many times Alan would call me</p> <p>10 because Steve had called him upset about</p> <p>11 something and wanted to just understand</p> <p>12 what Steve was upset about. And so</p> <p>13 sometimes I didn't even explain for a</p> <p>14 particular matter so much as just what</p> <p>15 something was, if that makes any sense, in</p> <p>16 the abstract.</p> <p>17 <b>Q. And as you've testified, these</b></p> <p>18 <b>are instances in which you continued to</b></p> <p>19 <b>have a dialogue with one or more members of</b></p> <p>20 <b>Quickie regarding their intellectual</b></p> <p>21 <b>property interests in general and the '160</b></p> <p>22 <b>Patent in particular?</b></p> <p>23 THE WITNESS: Are you going to</p> <p>24 object to that or should I?</p> <p>25 MR. KAMINSKY: Thank you for</p>	<p style="text-align: right;">Page 220</p> <p>1 T. Sharinn</p> <p>2 <b>'160 Patent, is it not?</b></p> <p>3 A. It is, but here again, here are</p> <p>4 the Quickie re-examination papers, you have</p> <p>5 time to discuss. You know, before that,</p> <p>6 it's a meeting over at Steve's office, his</p> <p>7 secretary, you know, she's just sending me</p> <p>8 stuff that was sent to him.</p> <p>9 It's not that, it doesn't look to</p> <p>10 me as though there's -- I guess what I'm</p> <p>11 trying to say is that this isn't in my mind</p> <p>12 refreshing my recollection to believe that</p> <p>13 I was working with them on this matter in</p> <p>14 any meaningful way and I certainly, the</p> <p>15 re-examination would have absolutely</p> <p>16 nothing to do with the '160 Patent's</p> <p>17 maintenance fees.</p> <p>18 <b>Q. But Mr. Sharinn, you certainly</b></p> <p>19 <b>aren't giving an indication to Mr. Colvin</b></p> <p>20 <b>or Mr. Fell that you're not working with</b></p> <p>21 <b>them insofar as they're continuing to call</b></p> <p>22 <b>you up about this particular matter?</b></p> <p>23 A. Well, I tell you what I don't see</p> <p>24 them calling me up on, is I don't see them</p> <p>25 calling me up and saying, hey, Todd, you</p>
<p style="text-align: right;">Page 219</p> <p>1 T. Sharinn</p> <p>2 giving me the opportunity.</p> <p>3 A. Well, I mean, that's just a</p> <p>4 terrible question, number one.</p> <p>5 Number two, it's presuming that I</p> <p>6 even testified to what you said I testified</p> <p>7 to, which I testified completely to the</p> <p>8 contrary.</p> <p>9 I've told you since the beginning</p> <p>10 of this that I never stopped talking to</p> <p>11 Alan Fell or Steve Colvin until just prior</p> <p>12 to the initiation of the current lawsuit,</p> <p>13 and even subsequent to the filing of it, I</p> <p>14 have had conversations with Alan Fell, both</p> <p>15 on a personal and a professional level.</p> <p>16 So no, it's not that unusual that</p> <p>17 Alan Fell would be calling me to talk to me</p> <p>18 about something. Whether this was in</p> <p>19 regards to Quickie or not, I can't</p> <p>20 determine other than that it says counsel</p> <p>21 for Quickie.</p> <p>22 <b>Q. You're referring to Exhibit 29</b></p> <p>23 <b>specifically?</b></p> <p>24 A. I am, yes, sir.</p> <p>25 <b>Q. But Exhibit 28 is specific to the</b></p>	<p style="text-align: right;">Page 221</p> <p>1 T. Sharinn</p> <p>2 want to talk about the '160 Patent.</p> <p>3 <b>Q. But they are talking about --</b></p> <p>4 A. No, they're talking about the</p> <p>5 reexamination, two separate matters by the</p> <p>6 PTO serial numbers alone, separate and</p> <p>7 succinct.</p> <p>8 MR. KAMINSKY: Everyone stop for</p> <p>9 one second and let me just note</p> <p>10 objections to the last two or three</p> <p>11 questions, okay.</p> <p>12 BY MR. SCOTT:</p> <p>13 <b>Q. Let me hand you what's been</b></p> <p>14 <b>marked as Exhibit 42, and I'm going to give</b></p> <p>15 <b>you 43 at the same time because they're</b></p> <p>16 <b>related.</b></p> <p>17 A. Yes, sir.</p> <p>18 (Exhibit 42, Billing letters,</p> <p>19 marked for identification, as of this</p> <p>20 date.)</p> <p>21 (Exhibit 43, Document, marked for</p> <p>22 identification, as of this date.)</p> <p>23 A. Okay.</p> <p>24 <b>Q. Exhibit 42, I'll represent to you</b></p> <p>25 <b>that that is a compilation of various April</b></p>

57 (Pages 222 to 225)

<p style="text-align: right;">Page 222</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>9, 2003 billing letters that were sent out</b></p> <p>3 <b>by you in connection with the 51822 client.</b></p> <p>4 A. Okay.</p> <p>5 <b>Q. You've had a chance to at least</b></p> <p>6 <b>go through that?</b></p> <p>7 A. I did.</p> <p>8 <b>Q. And in that compilation, you sent</b></p> <p>9 <b>bills out in April of 2003 to Quickie in</b></p> <p>10 <b>connection with the 01 matter, correct?</b></p> <p>11 A. I did, yes.</p> <p>12 <b>Q. And one of the entries, if you</b></p> <p>13 <b>look at Bates number RS003065 --</b></p> <p>14 A. Yes, sir.</p> <p>15 <b>Q. The time entry there, letter to</b></p> <p>16 <b>Dr. Colvin regarding status and strategy</b></p> <p>17 <b>for various pending matters, do you see</b></p> <p>18 <b>that?</b></p> <p>19 A. Yes, sir.</p> <p>20 <b>Q. With the date for the actual</b></p> <p>21 <b>entry of 3/27/03, correct?</b></p> <p>22 A. Yes, sir. Do you have that</p> <p>23 letter?</p> <p>24 <b>Q. I don't know if I do or I don't.</b></p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 224</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>matter, correct?</b></p> <p>3 A. That's what it says, yes, sir.</p> <p>4 <b>Q. And I'm just plowing through,</b></p> <p>5 <b>Mr. Sharinn, now Bates number 2794.</b></p> <p>6 A. Okay.</p> <p>7 <b>Q. You likewise invoiced Quickie on</b></p> <p>8 <b>April 9, 2003 in connection with the 0102</b></p> <p>9 <b>matter, correct?</b></p> <p>10 A. Again, that's what it says.</p> <p>11 <b>Q. And if you look at Bates page</b></p> <p>12 <b>3097?</b></p> <p>13 A. 3097?</p> <p>14 <b>Q. Yes. It's about 4 pages, 5 pages</b></p> <p>15 <b>from the back.</b></p> <p>16 A. Yes, sir.</p> <p>17 <b>Q. You likewise invoiced Quickie on</b></p> <p>18 <b>April 9, 2003 in connection with the 0107</b></p> <p>19 <b>matter as well, correct?</b></p> <p>20 A. Again, that's what it says.</p> <p>21 <b>Q. Turning your attention to Exhibit</b></p> <p>22 <b>43 --</b></p> <p>23 A. Yes, sir.</p> <p>24 <b>Q. -- that's a billing letter from</b></p> <p>25 <b>you to Mr. Fell on behalf of Quickie dated</b></p>
<p style="text-align: right;">Page 223</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>Q. Do you have any recollection</b></p> <p>3 <b>about the letter as to what various matters</b></p> <p>4 <b>you were referring?</b></p> <p>5 A. I can only guess. You want me to</p> <p>6 do that?</p> <p>7 <b>Q. No.</b></p> <p>8 A. Then no.</p> <p>9 <b>Q. It doesn't do either of us any</b></p> <p>10 <b>good.</b></p> <p>11 <b>You likewise invoiced Quickie at</b></p> <p>12 <b>that time with regards to the 0101 patent,</b></p> <p>13 <b>correct?</b></p> <p>14 A. I'm sorry?</p> <p>15 <b>Q. You invoiced Quickie at that time</b></p> <p>16 <b>as well in connection with the 0101 matter?</b></p> <p>17 A. Where would that be?</p> <p>18 <b>Q. Bates number 3049.</b></p> <p>19 A. They're out of order, so it's</p> <p>20 really hard to --</p> <p>21 <b>Q. I apologize for that.</b></p> <p>22 A. It's okay. I'm just trying to</p> <p>23 find it. Okay. Say that again.</p> <p>24 <b>Q. You invoiced Quickie on April 19,</b></p> <p>25 <b>2003 as well in connection with the 0101</b></p>	<p style="text-align: right;">Page 225</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>May 18, 2004, correct?</b></p> <p>3 A. Well, it is, except that on the</p> <p>4 break you asked me to look through it and</p> <p>5 it was interesting you had marked a passage</p> <p>6 on Bates number 3180, and when I looked at</p> <p>7 the passage, that's for the concentric</p> <p>8 knotless and it looks like we had paid a</p> <p>9 fee for them there, that would be S&amp;A</p> <p>10 Rings.</p> <p>11 <b>Q. All right.</b></p> <p>12 <b>Understanding all of our</b></p> <p>13 <b>conversation --</b></p> <p>14 A. No, so I'm saying it's addressed</p> <p>15 to Fell and Quickie, care of Rick Steiner,</p> <p>16 but I think it's a bill that covers all the</p> <p>17 various matters at that time that I might</p> <p>18 have been billing time for any of the</p> <p>19 Colvin entities.</p> <p>20 <b>Q. And directing your attention to</b></p> <p>21 <b>Bates page 3180, the one you just</b></p> <p>22 <b>referenced --</b></p> <p>23 A. Yes, sir.</p> <p>24 <b>Q. -- that particular invoice which</b></p> <p>25 <b>is 1217480 regarding concentric passive</b></p>

58 (Pages 226 to 229)

<p style="text-align: right;">Page 226</p> <p>1 <b>T. Sharinn</b>  2 <b>knotless suture terminator is for a Quickie</b>  3 <b>matter 51822 and specifically matter 0102,</b>  4 <b>right?</b>  5 A. Oh, I don't know. It doesn't say  6 that, does it?  7 <b>Q. Look at the top.</b>  8 A. Oh, okay. That's the number  9 that's given to it, but it doesn't make  10 that -- if 51822 is Quickie, and this is  11 why I said you just have to look at the  12 patent because that would tell you  13 specifically who the assignee is, unless  14 Quickie was paying S&amp;A Rings' bills at that  15 time, and maybe that's the case. That  16 could very well be the explanation. I  17 wouldn't know.  18 <b>Q. But that's how you're referencing</b>  19 <b>it?</b>  20 A. Yes, that's how we're referencing  21 it, correct.  22 <b>Q. And are you familiar with the</b>  23 <b>55217 billing client?</b>  24 A. No.  25 <b>Q. Did you understand that 55217 was</b></p>	<p style="text-align: right;">Page 228</p> <p>1 T. Sharinn  2 <b>Q. The latter?</b>  3 A. Yes, sir.  4 <b>Q. All right. Thank you.</b>  5 A. As I said, and this is  6 unfortunately not just a Greenberg Traurig  7 thing, this is a Rick Steiner and also just  8 the relationship and the way Colvin managed  9 the relationship, there was a lot of  10 crossover between the various matters with  11 regards to the billing. It just got paid  12 from different accounts.  13 <b>Q. It's confusing?</b>  14 A. It was very confusing, and I  15 frankly didn't pay close attention to it  16 because what I paid attention to was that  17 the fees were reasonable and that they were  18 being paid.  19 <b>Q. The only letters transferring</b>  20 <b>files or matters that I've seen from my</b>  21 <b>review have referenced the 0104, which is</b>  22 <b>the Quickie Medtronics litigation or the</b>  23 <b>0109, which is the re-examination.</b>  24 <b>I have not seen any document that</b>  25 <b>transfers specifically the other Quickie</b></p>
<p style="text-align: right;">Page 227</p> <p>1 <b>T. Sharinn</b>  2 <b>Quickie vision?</b>  3 A. No.  4 <b>Q. Did you understand that 52805 was</b>  5 <b>liberty?</b>  6 A. I wouldn't understand any of  7 that, even at the time I wouldn't have  8 known the numbers. I wouldn't write the  9 numbers down.  10 <b>Q. So you don't have any</b>  11 <b>recollection of billing those clients</b>  12 <b>separate and apart from the Quickie client?</b>  13 A. No, and I don't know if that's  14 the case or not, but I would be surprised  15 unless I was specifically instructed,  16 otherwise, that there might not be invoices  17 where their stuff was on it, too, for these  18 other clients that you're referring to.  19 <b>Q. Let me see if I understand.</b>  20 A. Sure.  21 <b>Q. You would be surprised that there</b>  22 <b>were invoices going out to separate clients</b>  23 <b>at Liberty and Quickie, or you wouldn't be</b>  24 <b>surprised that there were?</b>  25 A. Correct.</p>	<p style="text-align: right;">Page 229</p> <p>1 <b>T. Sharinn</b>  2 <b>matters to anyone else's attention. I</b>  3 <b>never seen anything transferring the 01,</b>  4 <b>the 0101, or the 0107. Is there anywhere</b>  5 <b>else that you can think of sitting here</b>  6 <b>right now that I can go that those</b>  7 <b>documents might exist?</b>  8 MR. KAMINSKY: Objection to the  9 form of the question.  10 THE WITNESS: Can I answer it?  11 MR. KAMINSKY: Yes.  12 A. No.  13 <b>Q. Do you believe any such documents</b>  14 <b>exist?</b>  15 A. Wouldn't even begin to guess.  16 <b>Q. Well, let me ask, do you have any</b>  17 <b>reason to believe that any such documents</b>  18 <b>exist?</b>  19 MR. KAMINSKY: Object to the  20 form.  21 A. Wouldn't even fathom the thought.  22 It's just not something that I would even  23 think about.  24 MR. SCOTT: I'll go ahead and  25 pass the witness.</p>

59 (Pages 230 to 233)

<p style="text-align: right;">Page 230</p> <p>1 T. Sharinn</p> <p>2 EXAMINATION BY</p> <p>3 MR. KAMINSKY:</p> <p>4 <b>Q. Mr. Sharinn, your communications</b></p> <p>5 <b>in this matter included frequent</b></p> <p>6 <b>communications -- strike that.</b></p> <p>7 <b>Your communications in connection</b></p> <p>8 <b>with your representation of the Colvin</b></p> <p>9 <b>clients included communications with</b></p> <p>10 <b>Mr. Fell, is that right?</b></p> <p>11 A. It did.</p> <p>12 <b>Q. What did you understand his</b></p> <p>13 <b>position to be?</b></p> <p>14 A. He acted in the role of general</p> <p>15 counsel.</p> <p>16 <b>Q. And did you speak with him</b></p> <p>17 <b>frequently about the Colvin matters?</b></p> <p>18 A. I spoke to him frequently, and</p> <p>19 Colvin was among things that we had spoken</p> <p>20 about.</p> <p>21 <b>Q. Now, you saw in the client intake</b></p> <p>22 <b>matters that the address of the client was</b></p> <p>23 <b>given Quickie, care of Mr. Fell and his law</b></p> <p>24 <b>firm, is that right?</b></p> <p>25 <b>Do you want to go back and --</b></p>	<p style="text-align: right;">Page 232</p> <p>1 T. Sharinn</p> <p>2 <b>Q. That's the address, correct?</b></p> <p>3 A. Correct.</p> <p>4 <b>Q. Were you relying on Mr. Fell to</b></p> <p>5 <b>sort out which particular Colvin or Quickie</b></p> <p>6 <b>or Quickie or XYZ or S&amp;L or whatever the</b></p> <p>7 <b>client was and to appropriately sign the</b></p> <p>8 <b>charge to appropriate client?</b></p> <p>9 MR. SCOTT: Objection to form.</p> <p>10 BY MR. KAMINSKY:</p> <p>11 <b>Q. Were you relying upon Mr. Fell to</b></p> <p>12 <b>determine by particular Colvin entity,</b></p> <p>13 <b>particular charges and bills applied to?</b></p> <p>14 MR. SCOTT: Objection. Form.</p> <p>15 A. May I answer?</p> <p>16 <b>Q. Yes.</b></p> <p>17 A. Okay. From what I understand,</p> <p>18 you're asking me did I wait for Mr. Fell to</p> <p>19 figure out who should be paying me what,</p> <p>20 and the answer is yes.</p> <p>21 Mr. Fell and I established a</p> <p>22 protocol regards to the Colvin matters that</p> <p>23 it was just crazy to try and sort them out</p> <p>24 separately. So he would read the bills and</p> <p>25 if he had a question about it and a</p>
<p style="text-align: right;">Page 231</p> <p>1 T. Sharinn</p> <p>2 A. No, no, I was just thinking about</p> <p>3 your question. Yes, that's correct.</p> <p>4 <b>Q. And the billings went to</b></p> <p>5 <b>Mr. Fell, in other words, the billings for</b></p> <p>6 <b>these matters were sent to Mr. Fell, is</b></p> <p>7 <b>that right?</b></p> <p>8 A. Yes, sir.</p> <p>9 <b>Q. And were you --</b></p> <p>10 A. I think there may have one or two</p> <p>11 occasions where they weren't sent to Mr.</p> <p>12 Fell. They were actually sent to Steve</p> <p>13 Colvin, and I think that may have been a</p> <p>14 time when Steven and Alan may have had a</p> <p>15 little bit of a falling out.</p> <p>16 <b>Q. But, for example, if you look at</b></p> <p>17 <b>Exhibit 43, you know, that he was shown by</b></p> <p>18 <b>Quickie's counsel, the cover letter goes to</b></p> <p>19 <b>Alan Fell, Quickie, LLC, care of Rick</b></p> <p>20 <b>Steiner -- that's Mr. Fell's law firm,</b></p> <p>21 <b>correct?</b></p> <p>22 A. It is, but that's not my</p> <p>23 signature.</p> <p>24 <b>Q. Exhibit 42, same thing?</b></p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 233</p> <p>1 T. Sharinn</p> <p>2 reference he would ask me about it.</p> <p>3 <b>Q. And so you, yourself, didn't try</b></p> <p>4 <b>to figure out the specific relationship</b></p> <p>5 <b>between the Quickie entities or the Colvin</b></p> <p>6 <b>entities, is that right?</b></p> <p>7 A. I did early on and then I gave up</p> <p>8 and that was long before I ever got to</p> <p>9 Greenberg Traurig.</p> <p>10 <b>Q. Now, sometimes you wrote to</b></p> <p>11 <b>Mr. Fell with a reference to a matter that</b></p> <p>12 <b>might relate to a company other than</b></p> <p>13 <b>Quickie and yet you addressed your letter</b></p> <p>14 <b>to him care of Quickie, is that right?</b></p> <p>15 A. That did occur.</p> <p>16 MR. SCOTT: Objection to form.</p> <p>17 BY MR. KAMINSKY:</p> <p>18 <b>Q. And sometimes you wrote to</b></p> <p>19 <b>Mr. Fell about a matter that related to a</b></p> <p>20 <b>different Colvin entity and you wrote to</b></p> <p>21 <b>Mr. Fell care of his law firm, but</b></p> <p>22 <b>referenced that entity, isn't that right?</b></p> <p>23 A. That's correct.</p> <p>24 <b>Q. For example, let me show you a</b></p> <p>25 <b>document which we're going to mark Exhibit</b></p>

60 (Pages 234 to 237)

<p style="text-align: right;">Page 234</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>44 --</b></p> <p>3 <b>(Exhibit 44, Letter, marked for</b></p> <p>4 <b>identification, as of this date.)</b></p> <p>5 <b>Q. -- which is a letter from Todd</b></p> <p>6 <b>Sharinn to Alan Fell, S&amp;A Rings, LLC,</b></p> <p>7 <b>December 2, 2003 and it has the Bates</b></p> <p>8 <b>number GT505 to 507.</b></p> <p>9 <b>Is that an example of a letter</b></p> <p>10 <b>that you wrote to Mr. Fell referring to a</b></p> <p>11 <b>matter that involved S&amp;A Rings, LLC?</b></p> <p>12 A. Yeah, I mean, in this letter it's</p> <p>13 addressed to S&amp;A Rings, LLC and this</p> <p>14 concerns the passive knotless suture</p> <p>15 terminator, and it does have what I've been</p> <p>16 drilled into today to learn the Quickie</p> <p>17 reference number.</p> <p>18 <b>Q. Now, this is the concentric</b></p> <p>19 <b>terminator, start?</b></p> <p>20 A. Concentric passive knotless</p> <p>21 suture terminator.</p> <p>22 <b>Q. And was that a matter for S&amp;A</b></p> <p>23 <b>Rings or would it be Quickie?</b></p> <p>24 A. No, it would be S&amp;A Rings, I</p> <p>25 would think. The real way to determine</p>	<p style="text-align: right;">Page 236</p> <p>1 <b>T. Sharinn</b></p> <p>2 MR. SCOTT: Objection. Form.</p> <p>3 A. That's correct.</p> <p>4 <b>Q. So this is an example of where</b></p> <p>5 <b>you used the references to Quickie as sort</b></p> <p>6 <b>of a shorthand for all of the Colvin</b></p> <p>7 <b>matters, is that a fair thing to say?</b></p> <p>8 MR. SCOTT: Objection to the</p> <p>9 form.</p> <p>10 A. Yeah, if it means I was sloppy in</p> <p>11 my billing, they be, I guess I was sloppy</p> <p>12 in my billing.</p> <p>13 <b>Q. Did you use references to Quickie</b></p> <p>14 <b>as a shorthand to the various Colvin</b></p> <p>15 <b>matters?</b></p> <p>16 A. I did.</p> <p>17 MR. LODEN: Objection to form.</p> <p>18 <b>Q. Now I'm going to show you a</b></p> <p>19 <b>number of documents that we've marked, I'm</b></p> <p>20 <b>going to mark exhibits.</b></p> <p>21 <b>We're marking Exhibits 45, 46,</b></p> <p>22 <b>47, 48 and 49. Why don't I just identify</b></p> <p>23 <b>them for the record. Is that okay with</b></p> <p>24 <b>you, Skip?</b></p> <p>25 MR. SCOTT: That's fine.</p>
<p style="text-align: right;">Page 235</p> <p>1 T. Sharinn</p> <p>2 that would be to look at the actual letters</p> <p>3 patent and see who the assignee was.</p> <p>4 <b>Q. Do you remember there was a</b></p> <p>5 <b>Patent Number 745 that related to the</b></p> <p>6 <b>concentric terminator?</b></p> <p>7 A. That would be an application</p> <p>8 number, not a patent, but yes.</p> <p>9 <b>Q. Okay.</b></p> <p>10 <b>And that's different than the</b></p> <p>11 <b>'160 Patent, isn't it?</b></p> <p>12 A. Again, one would be an</p> <p>13 application, one would be a serial number</p> <p>14 for the application, yeah, there would be</p> <p>15 the actual letters patent and its</p> <p>16 registration number, but yes, it's a</p> <p>17 different number than what would have been</p> <p>18 on the '160.</p> <p>19 <b>Q. Do you remember when you looked</b></p> <p>20 <b>at client intake form for this concentric</b></p> <p>21 <b>passive knotless suture terminator it was</b></p> <p>22 <b>stated the client address as Quickie?</b></p> <p>23 A. I do.</p> <p>24 <b>Q. But yet this really was a matter</b></p> <p>25 <b>for S&amp;A Rings, is that correct?</b></p>	<p style="text-align: right;">Page 237</p> <p>1 T. Sharinn</p> <p>2 (Exhibit 45, Time entries, marked</p> <p>3 for identification, as of this date.)</p> <p>4 (Exhibit 46, Time entries, marked</p> <p>5 for identification, as of this date.)</p> <p>6 (Exhibit 47, Time entries, marked</p> <p>7 for identification, as of this date.)</p> <p>8 (Exhibit 48, Time entries, marked</p> <p>9 for identification, as of this date.)</p> <p>10 (Exhibit 49, Time entries, marked</p> <p>11 for identification, as of this date.)</p> <p>12 MR. KAMINSKY: Exhibit 45 are the</p> <p>13 pages containing the time entries from</p> <p>14 the various bills for the matter</p> <p>15 referred to as re-examination of U.S.</p> <p>16 Patent No. 6066160.</p> <p>17 46 are the time entries for the</p> <p>18 matter referred to as concentric</p> <p>19 passive knotless suture terminator.</p> <p>20 47 are the time entries for the</p> <p>21 matter referred to as Guidant</p> <p>22 Corporation.</p> <p>23 Exhibit 49 are the time entries</p> <p>24 for the matter referred to as Quickie</p> <p>25 v. Medtronic and various GT Bates</p>

61 (Pages 238 to 241)

<p style="text-align: right;">Page 238</p> <p>1 T. Sharinn</p> <p>2 numbers at the bottom of them.</p> <p>3 MR. SCOTT: Did you skip 48?</p> <p>4 MR. KAMINSKY: And Exhibit 48 is</p> <p>5 a composite of the time entries for</p> <p>6 the matter referred to as surgical</p> <p>7 drape patent application.</p> <p>8 BY MR. KAMINSKY:</p> <p>9 Q. Mr. Sharinn, I'm showing you the</p> <p>10 time entries for, from the Greenberg</p> <p>11 Taurig bills in the various Colvin or</p> <p>12 Quickie matters, which we've marked as</p> <p>13 Exhibits 45 through 49.</p> <p>14 Would you take a look first at</p> <p>15 Exhibit 45?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And that's the time entries on</p> <p>18 the re-examination -- that's the time</p> <p>19 entries for the -- -- the first page of it</p> <p>20 is the re-examination of the U.S. Patent</p> <p>21 No. 6,066,160.</p> <p>22 Do you see that?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Now do you have any time entries</p> <p>25 after December of 2002?</p>	<p style="text-align: right;">Page 240</p> <p>1 T. Sharinn</p> <p>2 Do you see any entries that occur</p> <p>3 after December 13, 2002?</p> <p>4 A. No.</p> <p>5 Q. So is it correct to say that</p> <p>6 although you opened up a new client matter</p> <p>7 in anticipation of doing work on this</p> <p>8 matter, in fact you didn't bill Quickie for</p> <p>9 work and become directly involved as</p> <p>10 counsel in the re-examination after that?</p> <p>11 MR. SCOTT: Object to the form.</p> <p>12 A. That appears to be the case.</p> <p>13 Q. Now, if you look at the second</p> <p>14 page of that exhibit, it actually refers to</p> <p>15 the passive knotless suture system.</p> <p>16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. And it has two entries on it in</p> <p>19 March of 2003.</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Can you tell us what work you</p> <p>23 were doing at that time?</p> <p>24 A. No.</p> <p>25 Q. Do you see that the second entry</p>
<p style="text-align: right;">Page 239</p> <p>1 T. Sharinn</p> <p>2 A. No.</p> <p>3 Q. Do you remember you opened up a</p> <p>4 new file in December of 2002 with a view to</p> <p>5 possibly doing work on this matter, is that</p> <p>6 right?</p> <p>7 A. I don't have any independent</p> <p>8 recollection of that.</p> <p>9 Q. Let me show you Exhibit 19.</p> <p>10 A. Yes, sir.</p> <p>11 Q. And do you recall that Mr. Scott</p> <p>12 showed you that document earlier and</p> <p>13 pointed out that you had opened up a client</p> <p>14 intake matter in December of 2002 after you</p> <p>15 had already been replaced with respect to</p> <p>16 the '160 Patent?</p> <p>17 MR. SCOTT: Object to the form.</p> <p>18 BY MR. KAMINSKY:</p> <p>19 Q. Do you recall that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Looking at the first page of</p> <p>22 Exhibit 45 --</p> <p>23 A. Yes, sir.</p> <p>24 Q. -- these are the time entries</p> <p>25 that we found for this particular matter.</p>	<p style="text-align: right;">Page 241</p> <p>1 T. Sharinn</p> <p>2 says telephone interview with examiner 0.4</p> <p>3 hours.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Do you know what that involved?</p> <p>7 A. No.</p> <p>8 Q. Do you remember doing any work as</p> <p>9 counsel for Quickie in connection with the</p> <p>10 re-examination matter after December of</p> <p>11 2002?</p> <p>12 A. I don't have any specific</p> <p>13 recollection.</p> <p>14 Q. Do you remember that after March</p> <p>15 of 2002 you received a notice from the</p> <p>16 Patent Office that all authority that you</p> <p>17 or Greenberg Taurig had had with respect</p> <p>18 to the '160 Patent had been revoked?</p> <p>19 MR. SCOTT: Object to the form.</p> <p>20 MR. LODEN: Object to the form.</p> <p>21 A. I don't recall the date of the</p> <p>22 revocation.</p> <p>23 MR. KAMINSKY: Let me show you a</p> <p>24 document which we will mark Exhibit</p> <p>25 50.</p>

62 (Pages 242 to 245)

<p style="text-align: right;">Page 242</p> <p>1 T. Sharinn</p> <p>2 (Exhibit 50, Notice, marked for</p> <p>3 identification, as of this date.)</p> <p>4 <b>Q. Is Exhibit 50 a copy of a notice</b></p> <p>5 <b>which you received?</b></p> <p>6 A. I'm sorry?</p> <p>7 <b>Q. Is Exhibit 50 a copy of the</b></p> <p>8 <b>notice that you received from the Patent</b></p> <p>9 <b>Office?</b></p> <p>10 A. It appears to be.</p> <p>11 <b>Q. Do you see that the notice is</b></p> <p>12 <b>dated April 2, 2003, do you see that?</b></p> <p>13 A. It does.</p> <p>14 <b>Q. And as a patent lawyer, what do</b></p> <p>15 <b>you understand this notice to be telling</b></p> <p>16 <b>you?</b></p> <p>17 A. That there is a new person in</p> <p>18 charge of this file.</p> <p>19 <b>Q. Do you have any further authority</b></p> <p>20 <b>as to this matter after that?</b></p> <p>21 MR. SCOTT: Object. Form.</p> <p>22 A. No.</p> <p>23 <b>Q. Is that what you understood to be</b></p> <p>24 <b>the case?</b></p> <p>25 A. I can't speak of what I</p>	<p style="text-align: right;">Page 244</p> <p>1 T. Sharinn</p> <p>2 A. I did.</p> <p>3 <b>Q. And then you continue on and say</b></p> <p>4 <b>well, we are surprised to have received</b></p> <p>5 <b>this document in view of the conversation I</b></p> <p>6 <b>had with Dr. Colvin, we respect his</b></p> <p>7 <b>decision and take no further action on this</b></p> <p>8 <b>matter.</b></p> <p>9 <b>Do you see that?</b></p> <p>10 A. I do.</p> <p>11 <b>Q. What were you saying to Quickie?</b></p> <p>12 MR. SCOTT: Objection to form.</p> <p>13 A. What was I what?</p> <p>14 <b>Q. What were you trying to say to</b></p> <p>15 <b>Quickie?</b></p> <p>16 A. I don't know if it could be</p> <p>17 anymore clearer than that, I will take no</p> <p>18 further action on this matter.</p> <p>19 MR. SCOTT: My objection is to</p> <p>20 the repeat of the same question.</p> <p>21 BY MR. KAMINSKY:</p> <p>22 <b>Q. Did Mr. Fell or Dr. Colvin or</b></p> <p>23 <b>anyone else from the Colvin entities or</b></p> <p>24 <b>Quickie call you up after that and say to</b></p> <p>25 <b>you, oh, no, wait a minute, Todd, we're</b></p>
<p style="text-align: right;">Page 243</p> <p>1 T. Sharinn</p> <p>2 understood back then. It's what I</p> <p>3 understand, as I sit here today.</p> <p>4 <b>Q. Let me show you a document which</b></p> <p>5 <b>has been previously marked Exhibit 27 in</b></p> <p>6 <b>this case.</b></p> <p>7 <b>Is that a letter that you wrote</b></p> <p>8 <b>to Quickie, care of Mr. Fell's law firm on</b></p> <p>9 <b>May 15, 2003?</b></p> <p>10 A. It appears to be.</p> <p>11 <b>Q. And do you see that you write in</b></p> <p>12 <b>the first paragraph, "Enclosed for your</b></p> <p>13 <b>information and records are a copy of a</b></p> <p>14 <b>notice regarding change of Power of</b></p> <p>15 <b>Attorney filed in connection with the</b></p> <p>16 <b>above-referenced re-examination</b></p> <p>17 <b>application."</b></p> <p>18 <b>Do you see that?</b></p> <p>19 A. Yes, sir.</p> <p>20 <b>Q. And attached to it as the</b></p> <p>21 <b>enclosure is a copy of Exhibit 50, is that</b></p> <p>22 <b>right?</b></p> <p>23 A. Yes, sir.</p> <p>24 <b>Q. So you sent a copy of this notice</b></p> <p>25 <b>to Quickie, is that right?</b></p>	<p style="text-align: right;">Page 245</p> <p>1 T. Sharinn</p> <p>2 <b>still looking to you or to Greenberg</b></p> <p>3 <b>Traurig to continue to work on '160 Patent?</b></p> <p>4 A. No.</p> <p>5 <b>Q. They did call you at various</b></p> <p>6 <b>times, both before and after the fact about</b></p> <p>7 <b>the re-examination petition to discuss</b></p> <p>8 <b>things that were going on with the Thelen</b></p> <p>9 <b>firm, is that correct?</b></p> <p>10 A. Yes, sir.</p> <p>11 <b>Q. What did you tell them about your</b></p> <p>12 <b>status vis-a-vis the '160 Patent in those</b></p> <p>13 <b>conversations?</b></p> <p>14 A. I don't know that we ever really</p> <p>15 talked about it in any great terms, but I'm</p> <p>16 certain knowing myself and the way I would</p> <p>17 conduct myself that I would have told them</p> <p>18 I had been relieved of all duties for that</p> <p>19 case.</p> <p>20 <b>Q. And is that what you understood</b></p> <p>21 <b>had happened?</b></p> <p>22 A. That's what I wrote in the</p> <p>23 letter, yes, sir.</p> <p>24 <b>Q. Now, when you say that case, what</b></p> <p>25 <b>are you referring to by the words "that</b></p>



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<p style="text-align: right;">Page 246</p> <p>1 <b>T. Sharinn</b>  2 <b>case"?</b>  3 A. The 160 matter, whether it be the  4 underlying file wrapper or the actual  5 litigation.  6 <b>Q. And that would include the</b>  7 <b>Medtronic litigation, is that right?</b>  8 MR. SCOTT: Object to form.  9 A. It would include the prosecution,  10 the policing and the enforcement of the  11 '160 Patent.  12 <b>Q. Did you ever see the notice with</b>  13 <b>the Patent Office revoking any Power of</b>  14 <b>Attorney that you at Greenberg Traurig had</b>  15 <b>previously had with respect to the '160</b>  16 <b>Patent?</b>  17 A. Patent.  18 <b>Q. Is it your understanding that</b>  19 <b>when you get a document such as Exhibit</b>  20 <b>150 --</b>  21 A. Exhibit 50, you mean?  22 <b>Q. Exhibit 50, I'm sorry, thank you,</b>  23 <b>is it your understanding that when you get</b>  24 <b>a document such as Exhibit 50, that that is</b>  25 <b>the result of something that is filed by</b></p>	<p style="text-align: right;">Page 248</p> <p>1 <b>T. Sharinn</b>  2 <b>Attorney/Revocation of Prior Powers of</b>  3 <b>Attorney filed with the U.S. Patent and</b>  4 <b>Trademark Office on March 10, 2003 for your</b>  5 <b>records."</b>  6 <b>Do you see that?</b>  7 A. I do.  8 <b>Q. And then do you see that attached</b>  9 <b>is that form which is signed by Aubrey</b>  10 <b>Galloway of Quickie on March 4, 2003.</b>  11 <b>Do you see that?</b>  12 A. I do.  13 <b>Q. Do you see a certificate of</b>  14 <b>mailing that's attached on the last page</b>  15 <b>that certifies that this document was</b>  16 <b>mailed to the U.S. Patent Office on March</b>  17 <b>20, 2003.</b>  18 <b>Do you see that?</b>  19 A. Yes, sir.  20 <b>Q. Turning back to the first page of</b>  21 <b>the revocation, do you see that the notice</b>  22 <b>says that all prior powers of attorney</b>  23 <b>previously given are hereby revoked, and a</b>  24 <b>new Power of Attorney for the following</b>  25 <b>attorneys or agents are hereby appointed.</b></p>
<p style="text-align: right;">Page 247</p> <p>1 <b>T. Sharinn</b>  2 <b>the patent owner with a Patent Office.</b>  3 A. It wouldn't happen by itself,  4 yes, sir.  5 <b>Q. Did you ever see what Quickie had</b>  6 <b>actually filed with the Patent Office?</b>  7 A. I would imagine it's just a form.  8 (Exhibit 51, Letter, marked for  9 identification, as of this date.)  10 <b>Q. Exhibit 51, which we've just</b>  11 <b>marked is a letter from Thelen Reid &amp;</b>  12 <b>Priest to Mr. Colvin at Quickie dated April</b>  13 <b>16, 2003 and attaches to it a Power of</b>  14 <b>Attorney by assignee revocation of prior</b>  15 <b>powers form. It's Bates numbered QLLC,</b>  16 <b>62220 through 24.</b>  17 <b>Did you ever see that document</b>  18 <b>before?</b>  19 A. No. Can I look at it, please?  20 <b>Q. Yes.</b>  21 A. I've never seen it before today.  22 <b>Q. Do you see that on the second</b>  23 <b>paragraph of the cover letter Thelen</b>  24 <b>advises Dr. Colvin and Quickie, "Also</b>  25 <b>enclosed is a copy of Power of</b></p>	<p style="text-align: right;">Page 249</p> <p>1 <b>T. Sharinn</b>  2 <b>Do you see that?</b>  3 A. Yes, sir.  4 <b>Q. And underneath that it lists a</b>  5 <b>number of names.</b>  6 <b>Do you see that?</b>  7 A. I do.  8 <b>Q. One of the names is Robert E.</b>  9 <b>Krebs and another is Mark Hanish, John</b>  10 <b>Schaub, S-C-H-A-U-B, Stephen Robins and</b>  11 <b>various other names.</b>  12 MR. SCOTT: There's a lot.  13 MR. KAMINSKY: There are a number  14 of names.  15 BY MR. KAMINSKY:  16 <b>Q. Did you understand that Mr. Krebs</b>  17 <b>was an attorney at Thelen Reid &amp; Priest?</b>  18 A. Well, I mean, no, not until the  19 commencement of this lawsuit, I would have  20 never even heard of Mr. Krebs.  21 <b>Q. But you now know that he was an</b>  22 <b>attorney at Thelen Reid &amp; Priest, is that</b>  23 <b>correct?</b>  24 A. Either that or he's pretending,  25 but yes, it seems like he would be the most</p>



64 (Pages 250 to 253)

<p style="text-align: right;">Page 250</p> <p>1 T. Sharinn</p> <p>2 senior attorney because he's number one on</p> <p>3 here.</p> <p>4 <b>Q. And the form involved references</b></p> <p>5 <b>the passive knotless suture terminator.</b></p> <p>6 <b>Do you see that?</b></p> <p>7 A. Yes, sir.</p> <p>8 <b>Q. And that's the '160 Patent, is</b></p> <p>9 <b>that right?</b></p> <p>10 A. Yes, it is.</p> <p>11 <b>Q. As noted by the patent number at</b></p> <p>12 <b>the top of the form?</b></p> <p>13 A. Yes, sir. If this was directed</p> <p>14 to only the re-examination, it would have</p> <p>15 the re-examination serial number.</p> <p>16 <b>Q. But this was with respect to the</b></p> <p>17 <b>patent itself, is that right?</b></p> <p>18 A. Yes, sir.</p> <p>19 <b>Q. Now, as an attorney who is</b></p> <p>20 <b>admitted to practice before the Patent</b></p> <p>21 <b>Office and experienced in these matters, is</b></p> <p>22 <b>the effect of this form to say that whoever</b></p> <p>23 <b>had a Power of Attorney before no longer</b></p> <p>24 <b>has any involvement here and now these new</b></p> <p>25 <b>attorneys listed below are the attorneys</b></p>	<p style="text-align: right;">Page 252</p> <p>1 T. Sharinn</p> <p>2 A. Never.</p> <p>3 <b>Q. Have you ever seen this kind of</b></p> <p>4 <b>form before?</b></p> <p>5 A. I have and it's always been</p> <p>6 filled out by a paralegal on my behalf.</p> <p>7 <b>Q. But in other words, you've</b></p> <p>8 <b>submitted them on behalf of your clients?</b></p> <p>9 A. I've signed them.</p> <p>10 <b>Q. And your understanding from your</b></p> <p>11 <b>own personal knowledge and observation that</b></p> <p>12 <b>the purpose of this form is to replace one</b></p> <p>13 <b>attorney or set of attorneys with a new set</b></p> <p>14 <b>of attorneys?</b></p> <p>15 A. It has two purposes. The first</p> <p>16 purpose is to remove all powers from the</p> <p>17 original or existing attorneys with power;</p> <p>18 and second, in some cases could be a</p> <p>19 designation of a new attorney. There is</p> <p>20 another form similar to this that does not</p> <p>21 designate other attorneys. It's a</p> <p>22 substitute.</p> <p>23 <b>Q. But the one that we've marked</b></p> <p>24 <b>here did designate new attorneys, correct?</b></p> <p>25 A. Yes, it does.</p>
<p style="text-align: right;">Page 251</p> <p>1 T. Sharinn</p> <p>2 <b>with respect to this patent?</b></p> <p>3 MR. SCOTT: Objection to form.</p> <p>4 A. Yeah. I mean, you're really</p> <p>5 asking me for my experience what this means</p> <p>6 as opposed to being a witness in this case.</p> <p>7 My opinion on this would be that</p> <p>8 or my interpretation of this document as</p> <p>9 I've always understood it and as someone</p> <p>10 who has filed them with regards to others</p> <p>11 means that those others are no longer</p> <p>12 permitted to participate in the prosecution</p> <p>13 or the maintenance of the referenced</p> <p>14 patent.</p> <p>15 MR. SCOTT: I'm going to object</p> <p>16 and move to strike to the extent that</p> <p>17 you're not designated as an expert.</p> <p>18 THE WITNESS: I'm not, and I</p> <p>19 don't want to be considered one.</p> <p>20 BY MR. KAMINSKY:</p> <p>21 <b>Q. But you have experience before</b></p> <p>22 <b>the Patent Office, is that correct?</b></p> <p>23 A. I've been doing this for a while.</p> <p>24 <b>Q. You fill this kind of form out</b></p> <p>25 <b>for clients of your own, is that right?</b></p>	<p style="text-align: right;">Page 253</p> <p>1 T. Sharinn</p> <p>2 <b>Q. Now, do you remember that you</b></p> <p>3 <b>were asked at a certain point to submit an</b></p> <p>4 <b>affidavit in support of an application by</b></p> <p>5 <b>Quickie petitioning for reinstatement of</b></p> <p>6 <b>the '160 Patent?</b></p> <p>7 A. Yes. I will tell you what I</p> <p>8 remember most.</p> <p>9 <b>Q. Please tell us what you remember</b></p> <p>10 <b>about the request that you submit that</b></p> <p>11 <b>declaration of affidavit of statement.</b></p> <p>12 A. I remember submitting it.</p> <p>13 <b>Q. Did you submit a statement in</b></p> <p>14 <b>support of a petition?</b></p> <p>15 A. I submitted a statement in</p> <p>16 support of a petition.</p> <p>17 <b>Q. I'm going to show you a document</b></p> <p>18 <b>that we're going to deem marked Exhibit 52</b></p> <p>19 <b>and tomorrow we'll substitute a clean copy</b></p> <p>20 <b>of it.</b></p> <p>21 MR. SCOTT: It's agreed.</p> <p>22 A. Yes, sir.</p> <p>23 (Exhibit 52, Statement, marked</p> <p>24 for identification, as of this date.)</p> <p>25 <b>Q. It's a two-page statement.</b></p>

65 (Pages 254 to 257)

<p style="text-align: right;">Page 254</p> <p>1 <b>T. Sharinn</b>  2 <b>Is that your signature at the end</b>  3 <b>of it?</b>  4 A. Yes.  5 <b>Q. And is that a copy of the</b>  6 <b>statement you submitted in November of 2006</b>  7 <b>in support of Quickie's petition?</b>  8 A. May I look at it?  9 <b>Q. Yes, please do.</b>  10 A. Yes, this was a paper that I was  11 asked personally by Alan Fell, and I don't  12 recall, but possibly Steve Colvin to sign  13 and then I ended it a little bit, and yes,  14 I did sign this.  15 <b>Q. Was it initially drafted by the</b>  16 <b>Maier &amp; Maier firm as counsel for Quickie?</b>  17 A. It had always been drafted by  18 them.  19 <b>Q. And you reviewed it and made some</b>  20 <b>changes?</b>  21 A. My own ones, yes, sir.  22 <b>Q. And before you signed it, did you</b>  23 <b>have conversations with anyone at Maier &amp;</b>  24 <b>Maier telling them that you were now</b>  25 <b>satisfied and were prepared to sign?</b></p>	<p style="text-align: right;">Page 256</p> <p>1 T. Sharinn  2 <b>Q. Does that refresh your</b>  3 <b>recollection that you had been shown that</b>  4 <b>revocation form sometime before you signed</b>  5 <b>this statement?</b>  6 A. I must have been. I wouldn't  7 have signed it if I hadn't looked at it.  8 <b>Q. And is the statement that I just</b>  9 <b>quoted from paragraph 2 true?</b>  10 A. It is.  11 <b>Q. Was it true then?</b>  12 A. It's true always.  13 <b>Q. Did anyone ever come to you</b>  14 <b>afterwards and say Todd, the statement you</b>  15 <b>submitted at our request on November 20,</b>  16 <b>2006 was actually wrong and we want you to</b>  17 <b>submit a different statement retracting</b>  18 <b>what you said in Exhibit 2?</b>  19 A. No.  20 <b>Q. Had anyone ever asked you to say</b>  21 <b>anything different to the Patent Office</b>  22 <b>than was said there?</b>  23 A. No.  24 (Exhibit 53, Statement, marked  25 for identification, as of this date.)</p>
<p style="text-align: right;">Page 255</p> <p>1 <b>T. Sharinn</b>  2 A. Yeah.  3 <b>Q. Now, in paragraph number two --</b>  4 A. They didn't tell me what it was  5 going to be used for specifically other  6 than they had mentioned to me that the  7 patent had been abandoned, which I was  8 surprised to hear.  9 <b>Q. Was that the first that you</b>  10 <b>learned that the patent had been abandoned?</b>  11 A. Yes, sir.  12 <b>Q. Now, this is November 2006. You</b>  13 <b>write in paragraph 2:</b>  14 <b>"My responsibility, including the</b>  15 <b>payment of any maintenance fee that may</b>  16 <b>become due for the subject patent ended</b>  17 <b>prior to the date where the payment of a</b>  18 <b>first maintenance fee was due as evidenced</b>  19 <b>by the enclosed revocation of prior powers</b>  20 <b>of attorney signed on behalf of Quickie,</b>  21 <b>LLC on March 4, 2003 wherein all prior</b>  22 <b>powers of attorney previously given were</b>  23 <b>hereby revoked."</b>  24 <b>Do you see that?</b>  25 A. I do.</p>	<p style="text-align: right;">Page 257</p> <p>1 T. Sharinn  2 <b>Q. I'll show you a document which we</b>  3 <b>will mark, deem marked Exhibit 53, which is</b>  4 <b>a statement in support of petition by</b>  5 <b>Aubrey Galloway signed on either October</b>  6 <b>27, 2006 or on November 27, 2006. It's a</b>  7 <b>little hard to see what the date is.</b>  8 A. It's October 27th.  9 <b>Q. Have you ever seen his signature</b>  10 <b>before?</b>  11 A. Sure.  12 <b>Q. Does that appear to be his</b>  13 <b>signature?</b>  14 A. Yes.  15 <b>Q. Have you ever seen this document</b>  16 <b>before?</b>  17 A. I may have. I don't recall  18 specifically. So you understand, I tried  19 my hardest not to be involved in any  20 further matters with the Colvin companies.  21 This is while I was at Baker McKenzie, and  22 I had very little interest in even doing  23 this.  24 <b>Q. Now, Dr. Galloway says under oath</b>  25 <b>in paragraph 2:</b></p>

66 (Pages 258 to 261)

<p style="text-align: right;">Page 258</p> <p>1           <b>T. Sharinn</b>  2           <b>"As the managing partner for</b>  3 <b>Quickie, LLC, I retained Robert E. Krebs,</b>  4 <b>et al. of Thelen Reid &amp; Priest, LLP law</b>  5 <b>firm to transact all post-issuance</b>  6 <b>proceedings and responsibilities in the</b>  7 <b>Patent and Trademark Office including, but</b>  8 <b>not limited to, re-examination proceedings</b>  9 <b>and timely payment of the maintenance</b>  10 <b>fees."</b>  11           <b>Continuing in paragraph 3, he</b>  12 <b>says:</b>  13           <b>"As managing partner for Quickie,</b>  14 <b>LLC, I retained the law firm of Thelen Reid</b>  15 <b>&amp; Priest to concurrently conduct litigation</b>  16 <b>services for Quickie, LLC."</b>  17           <b>Is that consistent with your</b>  18 <b>understanding of what had happened when you</b>  19 <b>were replaced by Thelen Reid &amp; Priest in</b>  20 <b>the fall of 2002 or early 2003?</b>  21           A. It is. It, in fact, underscores  22 another point that unfortunately, and  23 Mr. Scott had asked me earlier whether  24 Dr. Colvin expressed dissatisfaction with  25 the fact that Paul Sutton wasn't involved</p>	<p style="text-align: right;">Page 260</p> <p>1           <b>T. Sharinn</b>  2 not sure.  3           <b>Q. Please do.</b>  4           A. I don't believe I have seen this  5 before, no. I may have, and the only  6 reason I say may have is there was an  7 article written about me in IP360, which is  8 a Reg in the IP industry, IP meaning  9 intellectual property, and I got very upset  10 because I was never called by them to ask  11 what my opinion of all this was and that's  12 actually how I learned about the lawsuit in  13 the first place.  14           I had no idea about this until I  15 saw the article. And so I had a paralegal  16 pull off some materials from the PTO  17 website, and I may have looked at this  18 document when I had written them a nasty  19 e-mail saying that I expected a full  20 retraction of the statements that they  21 issued, which they ultimately did do. They  22 republished a new article.  23           <b>Q. Do you see that in the third</b>  24 <b>paragraph of this petition -- I'm sorry,</b>  25 <b>supplement to petition, Quickie's counsel</b></p>
<p style="text-align: right;">Page 259</p> <p>1           <b>T. Sharinn</b>  2 in the case, and this actually reminds me  3 that, no, Steve Colvin did not.  4           But Aubrey who always seemed to  5 have a problem with everything did express  6 some concern about certain things, not with  7 the Paul Sutton thing, but that he had  8 expressed a favoritism towards Thelen Reid,  9 I remember that.  10           <b>Q. Let me show you one other</b>  11 <b>document.</b>  12           <b>This is a supplement to the</b>  13 <b>petition in the Quickie reexamination</b>  14 <b>proceeding relating to the '160 Patent,</b>  15 <b>which we'll mark Exhibit 54.</b>  16           A. Okay.  17           (Exhibit 54, Petition supplement,  18 marked for identification, as of this  19 date.)  20           <b>Q. It is signed by Maier &amp; Maier as</b>  21 <b>counsel for Quickie, dated December 1,</b>  22 <b>2006.</b>  23           <b>Have you seen this document</b>  24 <b>before?</b>  25           A. I would need to look at it. I'm</p>	<p style="text-align: right;">Page 261</p> <p>1           <b>T. Sharinn</b>  2 <b>writes:</b>  3           <b>"A declaration by Todd S.</b>  4 <b>Sharinn is being added as Exhibit 7 showing</b>  5 <b>that he was attorney at Pepe &amp; Hazard, LLP</b>  6 <b>and was responsible for the '160 Patent.</b>  7 <b>Later, he left Pepe &amp; Hazard, but continued</b>  8 <b>to be responsible for the '160 Patent as an</b>  9 <b>attorney at Greenberg Traurig (Exhibit 8).</b>  10           <b>"Further, his responsibility for</b>  11 <b>the '160 Patent ended prior to the time</b>  12 <b>when the payment of a first maintenance fee</b>  13 <b>was due (Exhibits 3 and 10) revocation of</b>  14 <b>prior powers of attorney signed on behalf</b>  15 <b>of the patent owner on March 4, 2003."</b>  16           <b>Do you see that?</b>  17           A. I do.  18           <b>Q. Is this statement that your</b>  19 <b>responsibility for the '160 Patent had</b>  20 <b>ended prior to the time the payment of the</b>  21 <b>first maintenance fee was due correct?</b>  22           A. It is.  23           MR. SCOTT: Objection. Form.  24 BY MR. KAMINSKY:  25           <b>Q. Did Mr. Maier ever call you up</b></p>

67 (Pages 262 to 265)

<p style="text-align: right;">Page 262</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>after submitting this document to the PTO</b></p> <p>3 <b>and say, Todd, we submitted a document</b></p> <p>4 <b>stating that your responsibility for the</b></p> <p>5 <b>'160 Patent had ended prior to the time</b></p> <p>6 <b>that the first maintenance fee was due, we</b></p> <p>7 <b>were wrong about that, will you sign a new</b></p> <p>8 <b>statement and confirm that we were wrong?</b></p> <p>9 A. No.</p> <p>10 <b>Q. Would you have signed such a</b></p> <p>11 <b>statement if he had asked you to do that?</b></p> <p>12 A. If, in fact, I had messed up and</p> <p>13 done that, yes. But I didn't and he</p> <p>14 didn't.</p> <p>15 <b>Q. Based on your understanding</b></p> <p>16 <b>today, the statement that your</b></p> <p>17 <b>responsibility had ended before the</b></p> <p>18 <b>maintenance fee was due is correct, is that</b></p> <p>19 <b>right?</b></p> <p>20 A. It is.</p> <p>21 <b>Q. Now, in the supplemental</b></p> <p>22 <b>petition, Quickie's counsel goes on to say</b></p> <p>23 <b>on page 2:</b></p> <p>24 <b>"Thelen Reid &amp; Priest was granted</b></p> <p>25 <b>and held sole and full power in the '160</b></p>	<p style="text-align: right;">Page 264</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>they made a mistake with Thelen Reid &amp;</b></p> <p>3 <b>Priest.</b></p> <p>4 <b>Q. When you say made a mistake with</b></p> <p>5 <b>Thelen Reid &amp; Priest, were they referring</b></p> <p>6 <b>to the fact that they felt they made a</b></p> <p>7 <b>mistake in hiring Thelen Reid &amp; Priest?</b></p> <p>8 A. Yes, sir.</p> <p>9 <b>Q. Not in what they said to the PTO</b></p> <p>10 <b>about Thelen Reid &amp; Priest's</b></p> <p>11 <b>responsibility, is that correct?</b></p> <p>12 A. That's correct.</p> <p>13 <b>Q. Now, in an earlier question, the</b></p> <p>14 <b>transcript doesn't reflect an answer.</b></p> <p>15 <b>I read you a statement from this</b></p> <p>16 <b>petition about Thelen Reid &amp; Priest ease</b></p> <p>17 <b>responsibility and power of responsibility</b></p> <p>18 <b>of the patent.</b></p> <p>19 <b>Is it your understanding that</b></p> <p>20 <b>that statement in the supplement to the</b></p> <p>21 <b>petition was correct?</b></p> <p>22 A. Yes, sir.</p> <p>23 Can we take a break for a minute?</p> <p>24 (Recess taken from 2:49 p.m. to</p> <p>25 2:55 p.m.)</p>
<p style="text-align: right;">Page 263</p> <p>1 <b>T. Sharinn</b></p> <p>2 <b>Patent from March 4, 2003 through August</b></p> <p>3 <b>14, 2006 (Exhibits 3, 9 and 10). This</b></p> <p>4 <b>period of time covered the time period up</b></p> <p>5 <b>until May 23, 2004 for timely paying the</b></p> <p>6 <b>first maintenance fee and then the entire</b></p> <p>7 <b>two-year time period starting from the date</b></p> <p>8 <b>of the '160 Patent's expiration to file a</b></p> <p>9 <b>remedial petition under the unintentional</b></p> <p>10 <b>provision (37 CFR 1.378(c)); this time</b></p> <p>11 <b>two-year expiration period ended on March</b></p> <p>12 <b>24, 2006."</b></p> <p>13 <b>Is it your understanding that</b></p> <p>14 <b>that is a correct statement of Thelen Reid</b></p> <p>15 <b>&amp; Priest's responsibility and power?</b></p> <p>16 MR. SCOTT: Objection. Form.</p> <p>17 BY MR. KAMINSKY:</p> <p>18 <b>Q. Did anyone on behalf of Quickie</b></p> <p>19 <b>ever call you up after that and say we made</b></p> <p>20 <b>a mistake when we said that Thelen Reid &amp;</b></p> <p>21 <b>Priest have the sole and full power with</b></p> <p>22 <b>respect to the maintenance fees and we need</b></p> <p>23 <b>to correct that?</b></p> <p>24 A. No one called me up after that.</p> <p>25 I had gotten calls in the past that said</p>	<p style="text-align: right;">Page 265</p> <p>1 <b>T. Sharinn</b></p> <p>2 BY MR. KAMINSKY:</p> <p>3 <b>Q. I want to show you again Exhibits</b></p> <p>4 <b>45 through 49 which are the time entries</b></p> <p>5 <b>from the Greenberg Traurig bills that were</b></p> <p>6 <b>sent to the Colvin entities, all of which</b></p> <p>7 <b>are addressed to Quickie, care of Rick</b></p> <p>8 <b>Steiner, as you saw.</b></p> <p>9 MR. SCOTT: Let me just clarify</p> <p>10 for the record, if I could, Marty.</p> <p>11 Are you representing that those</p> <p>12 are all of the time entries that were</p> <p>13 sent to the Quickie entities, or only</p> <p>14 all of the time entries that were sent</p> <p>15 to the Quickie entities with Quickie</p> <p>16 as the addressee?</p> <p>17 MR. KAMINSKY: I believe it is</p> <p>18 all of the time entries. That was our</p> <p>19 intention.</p> <p>20 MR. SCOTT: It's not, I can tell</p> <p>21 you.</p> <p>22 MR. KAMINSKY: We'll have to come</p> <p>23 back to that at some point.</p> <p>24 BY MR. KAMINSKY:</p> <p>25 <b>Q. In these bills to Quickie, other</b></p>

68 (Pages 266 to 269)

<p style="text-align: right;">Page 266</p> <p>1 <b>T. Sharinn</b>  2 <b>than the concentric passive knotless suture</b>  3 <b>terminator, for convenience you've turned</b>  4 <b>to the last page of the last time entry, do</b>  5 <b>you see any time entries after March of</b>  6 <b>2003 which is the last month before you</b>  7 <b>received notice of the revocation of your</b>  8 <b>Power of Attorney in connection with the</b>  9 <b>'160 Patent?</b>  10 A. No.  11 Q. And as we said before, as you  12 explained before, the concentric passive  13 knotless suture terminator relates to an  14 S&amp;A patent, correct?  15 MR. SCOTT: Object to form.  16 A. Yes.  17 Q. Now, finally, you were shown  18 Exhibit 27, which is a letter from you to  19 Quickie, care of Rick Steiner, dated May  20 15, 2003, sending a copy of the notice of  21 the change of the Power of Attorney that  22 you had received.  23 Do you recall that?  24 A. Yes, sir.  25 Q. Did you bill Quickie for sending</p>	<p style="text-align: right;">Page 268</p> <p>1 T. Sharinn  2 MR. SCOTT:  3 Q. Mr. Sharinn, with regards to  4 Exhibit 27 as presented to you by counsel  5 for Greenberg Traurig, that as we've seen  6 in other instances references a specific  7 client matter number, does it not?  8 A. It has a specific client number  9 on there, yes, sir.  10 Q. And the client is Quickie,  11 correct?  12 A. According to what we've learned  13 today about the number and the top line of  14 the RE, one would think, yes, sir.  15 Q. And it refers to the 0109 matter,  16 correct?  17 A. It does.  18 Q. Which we saw as on Exhibit 17  19 applies to the re-examination, correct?  20 A. It does.  21 Q. And just so that the record is  22 clear with regards to the billing entries  23 that are exhibit -- Marty, check me on this  24 because I don't know I followed you  25 completely, Exhibit 46 concentric?</p>
<p style="text-align: right;">Page 267</p> <p>1 T. Sharinn  2 <b>them this letter?</b>  3 A. I hope not.  4 Q. Do you remember ever having done  5 so?  6 A. I'm having trouble at this point  7 today remembering yesterday. No.  8 Q. And as you saw in the time  9 entries that we've marked, there is no time  10 entry for such a bill, is there?  11 A. That's correct.  12 Q. Because as far as you were  13 concerned, you were no longer an attorney  14 for Quickie in connection with the '160  15 Patent after the beginning of April at the  16 latest 2003, is that correct?  17 MR. LODEN: Objection to form.  18 MR. SCOTT: Objection to form.  19 A. That's correct. I mean, I don't  20 know how many different ways I can say it.  21 MR. KAMINSKY: No further  22 questions.  23 MR. SCOTT: Can I just see  24 Exhibit 27?  25 FURTHER EXAMINATION BY</p>	<p style="text-align: right;">Page 269</p> <p>1 T. Sharinn  2 MR. KAMINSKY: I believe that's  3 correct, yes.  4 BY MR. SCOTT:  5 Q. There are billing entries into  6 September and December of '03 with regards  7 to that particular matter, correct?  8 A. Which matter?  9 Q. The matter that those billing  10 entries were for, which is a Quickie  11 matter --  12 MR. KAMINSKY: Which is the  13 concentric passive knotless suture  14 terminator.  15 A. Joe Shalenberger.  16 Q. Well, if you turn to the next  17 page, Mr. Sharinn, you'll see that there's  18 entries for yourself as well.  19 A. Okay. I don't know who Joe  20 Shalenberger is.  21 Q. That was going to be one of my  22 questions.  23 A. He shouldn't have been billing on  24 this, and my guess is that's time put into  25 the wrong matter.</p>

69 (Pages 270 to 273)

Page 270	Page 272
<p>1 T. Sharinn</p> <p>2 <b>Q. If you'll look to the next page</b></p> <p>3 <b>and see if there's --</b></p> <p>4 A. Yes, sir.</p> <p>5 <b>Q. Does that have entries for you?</b></p> <p>6 <b>I don't have a copy in front of me now.</b></p> <p>7 A. There are entries there made by</p> <p>8 me, yes, sir.</p> <p>9 <b>Q. And for what time period?</b></p> <p>10 A. Looks like October '03.</p> <p>11 <b>Q. And that's on the Quickie client,</b></p> <p>12 <b>correct?</b></p> <p>13 MR. KAMINSKY: Objection to the</p> <p>14 form of the question.</p> <p>15 A. Judging by the descriptions, that</p> <p>16 would be the case, yes, sir.</p> <p>17 <b>Q. And what is the matter number for</b></p> <p>18 <b>that?</b></p> <p>19 A. The matter number is 518220102.</p> <p>20 <b>Q. So the 0102 matter, correct?</b></p> <p>21 A. That's what it looks like, yes,</p> <p>22 sir.</p> <p>23 MR. KAMINSKY: Sorry, I do have</p> <p>24 one more question.</p> <p>25 BY MR. KAMINSKY:</p>	<p>1 T. Sharinn</p> <p>2 <b>Q. Quickie was not the owner of the</b></p> <p>3 <b>concentric passive knotless terminator, is</b></p> <p>4 <b>that correct?</b></p> <p>5 MR. SCOTT: Objection to form?</p> <p>6 A. That's my recollection.</p> <p>7 <b>Q. It was S&amp;A, is that correct?</b></p> <p>8 MR. SCOTT: Object to form.</p> <p>9 A. That's my recollection.</p> <p>10 MR. KAMINSKY: No further</p> <p>11 questions.</p> <p>12 MR. SCOTT: Mr. Sharinn, thank</p> <p>13 you.</p> <p>14 (Continued on next page to</p> <p>15 include signature and jurat.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 271	Page 273
<p>1 T. Sharinn</p> <p>2 <b>Q. I'm showing you a copy which we</b></p> <p>3 <b>will mark as Exhibit 55.</b></p> <p>4 <b>(Exhibit 55, '160 Patent, marked</b></p> <p>5 <b>for identification, as of this date.)</b></p> <p>6 <b>BY MR. KAMINSKY:</b></p> <p>7 <b>Q. Which is the actual patent issued</b></p> <p>8 <b>for the '160 Patent.</b></p> <p>9 <b>Do you see that?</b></p> <p>10 A. I do.</p> <p>11 <b>Q. What is the title of that?</b></p> <p>12 A. Passive knotless suture</p> <p>13 terminator for use in minimally invasive</p> <p>14 surgery and to facilitate standard tissues</p> <p>15 securing.</p> <p>16 <b>Q. Is that the same as the</b></p> <p>17 <b>concentric -- that's a different patent</b></p> <p>18 <b>than the concentric passive knotless</b></p> <p>19 <b>terminator, is that correct?</b></p> <p>20 A. Yes, sir. It concerns very</p> <p>21 different technology. It's owned by</p> <p>22 different companies.</p> <p>23 MR. SCOTT: Objection. Move to</p> <p>24 strike as nonresponsive.</p> <p>25 BY MR. KAMINSKY:</p>	<p>1 T. Sharinn</p> <p>2 MR. KAMINSKY: Thank you very</p> <p>3 much for being patient. I'm really</p> <p>4 sorry.</p> <p>5 THE WITNESS: No problem.</p> <p>6 (Time noted: 3:02 p.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

70 (Pages 274 to 276)

Page 274	Page 276
<p>1 2       <b>C E R T I F I C A T E</b> 3 <b>STATE OF NEW YORK )</b> 4       : ss. 5 <b>COUNTY OF NEW YORK )</b> 6 7       I, Joan Urzia, a Notary Public 8       within and for the State of New York, 9       do hereby certify: 10       That TODD SHARINN, the witness 11       whose deposition is hereinbefore set 12       forth, was duly sworn by me and that 13       such deposition is a true record of the 14       testimony given by the witness. 15       I further certify that I am not 16       related to any of the parties to this 17       action by blood or marriage, and that I 18       am in no way interested in the outcome 19       of this matter. 20       IN WITNESS WHEREOF, I have 21       hereunto set my hand this 13th day of 22       June, 2008. 23 24 25       _____           Joan Urzia</p>	<p>1 2 ----- <b>EXHIBITS (Cont'd)</b> ----- 3                               <b>FOR ID.</b> 4   46   Time entries           237 5   47   Time entries           237 6   48   Time entries           237 7   49   Time entries           237 8   50   Notice                242 9   51   Letter                 247 10   52   Statement             253 11   53   Statement             256 12   54   Petition supplement   259 13   55   '160 Patent           271 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 275	
<p>1 2 ----- <b>I N D E X</b> ----- 3 <b>WITNESS           EXAMINATION BY       PAGE</b> 4 <b>TODD SHARINN       MR. SCOTT       5, 268</b> 5       <b>MR. KAMINSKY       230</b> 6 7 ----- <b>EXHIBITS</b> ----- 8                               <b>FOR ID.</b> 9   31   Deposition Notice       6 10   32   Press release and biography   14 11   33   Document               36 12   34   Letter dated 5/4/01       54 13   35   Letter dated 10/3/05       57 14   36   Billing letter           89 15   37   E-mail                 143 16   38   Document               170 17   39   Letter                 203 18   40   Letter                 206 19   41   Letter                 207 20   42   Billing letters         221 21   43   Document               221 22   44   Letter                 234 23   45   Time entries           237 24 25                               (Continued)</p>	

# **EXHIBIT V**



Levin, Adrienne

---

From: Levin, Adrienne  
Sent: Monday, December 02, 2002 10:35 AM  
To: 'sharinn1@gtlaw.com'  
Subject: US Patent No. 6,066,160 and reexamination requested

Dear Todd:

Thank you for having your secretary call me this morning to confirm that you are still responsible for US Patent No. 6,066,160. In that regard, I am forwarding to you by messenger the November 22, 2002 letter and enclosures from Daniel Latham, Esq., of Medtronic, Inc., in respect of the reexamination requested for the subject patent.

Best regards,  
Adrienne Levin  
Trademark Administrator/IP Docket Manager  
Bryan Cave LLP-NY Office  
alevin@bryancave.com  
(212) 692-1927



# **EXHIBIT W**

10/11/2002 17:21 FAX 2025084321

THELEN-REID-P

001

\*\*\*\*\*  
 \*\*\* ERROR TX REPORT \*\*\*  
 \*\*\*\*\*

TX FUNCTION WAS NOT COMPLETED

TX/RX NO	1336	
CONNECTION TEL	34521#000002#12124220158	
CONNECTION ID	RICK STEINER SEC	Thelen Reid & Priest LLP
ST. TIME	10/11 17:19	
USAGE T	02'16	OCT 11 2002
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RESULT	NG	##0779

**FAXED**

**THELEN REID & PRIEST LLP**  
 MARKET SQUARE  
 701 PENNSYLVANIA AVENUE, N.W., SUITE 800  
 WASHINGTON, D.C. 20004  
 202 508-4000

FACSIMILE # 202-508-4321

CONFIRMATION # 202 508-4070

FACSIMILE MESSAGE

PLEASE DELIVER PROMPTLY

FOR: NAME: Alan Fell

COMPANY:

FAX NUMBER: 212 422-0158

CONFIRMATION NUMBER: 212 422-0488

FROM: NAME: Mark Evens

DATE/TIME: 10/11/02

REFERENCE NO.: 034521.000002 NO. OF PAGES (INCLUDING COVER): 5

MESSAGE:

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS  
 ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND OR EXEMPT  
 FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE

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10/11/2002 17:22 FAX

001

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 \*\*\* TX REPORT \*\*\*  
 \*\*\*\*\*

TRANSMISSION OK

Thelen Reid &amp; Priest LLP

OCT 11 2002

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**THELEN REID & PRIEST LLP**

MARKET SQUARE

701 PENNSYLVANIA AVENUE, N.W., SUITE 800

WASHINGTON, D.C. 20004

202 508-4000

FACSIMILE # 202-508-4321

CONFIRMATION # 202 508-4070

FACSIMILE MESSAGE

PLEASE DELIVER PROMPTLY

FOR: NAME: Dr. Colvin

COMPANY:

FAX NUMBER: 212 263-2246

CONFIRMATION NUMBER:

FROM: NAME: Mark Evens

DATE/TIME: 10/11/02

REFERENCE NO.: 034521.000002 NO.OF PAGES (INCLUDING COVER): 25

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10/11/2002 17:24 FAX 2025084321

THELEN-REID-P

001

\*\*\*\*\*  
 \*\*\* TX REPORT \*\*\*  
 \*\*\*\*\*

TRANSMISSION OK

TX/RX NO 1336  
 CONNECTION TEL 34521#000002#12126038001  
 CONNECTION ID  
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 USAGE T 01'24  
 PGS. SENT 6  
 RESULT OK

*TheLen Reid & Priest LLP*  
 OCT 11 2002  
 FAXED

**THELEN REID & PRIEST LLP**  
 MARKET SQUARE  
 701 PENNSYLVANIA AVENUE, N.W., SUITE 800  
 WASHINGTON, D.C. 20004  
 202 508-4000

FACSIMILE # 202-508-4321

CONFIRMATION # 202 508-4070

FACSIMILE MESSAGE

PLEASE DELIVER PROMPTLY

FOR: NAME: Shari Markowitz-Savitt

COMPANY: TRP - NY

FAX NUMBER: 202 603-2001

CONFIRMATION NUMBER:

FROM: NAME: Mark Evans

DATE/TIME: 10/11/02

REFERENCE NO.: 034521.000002 NO. OF PAGES (INCLUDING COVER): 5

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QLLC 0069669

**THELEN REID & PRIEST LLP**

ATTORNEYS AT LAW

NEW YORK  
WASHINGTON, D.C.  
MORRISTOWN, N.J.

MARKET SQUARE, SUITE 800  
701 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004-2608  
TEL (202) 508-4000 FAX (202) 508-4321  
www.thelenreid.com

SAN FRANCISCO  
LOS ANGELES  
SILICON VALLEY

October 11, 2002

VIA FACSIMILE

Dr. Stephen Colvin  
NYU Medical Center  
530 First Avenue  
Suite 9V  
New York, NY 10016

Alan Fell, Esq.  
Rick, Steiner, Segal & Fell, P.C.  
Three New York Plaza  
New York, NY 10004

Re: Transmittal of Documents

Dear Steve and Alan:

After I met with you earlier this week, Alan told me he would advise Todd about the firm change, so we could obtain the file from Todd's firm. I asked Shari Markowitz, a senior associate in our New York office, to call Todd to arrange the orderly transfer of the files to our office. Throughout the week, Shari called repeatedly, but was told that Todd either was unavailable or on the phone. Todd never returned any telephone calls. This morning, Todd's secretary advised Shari that Todd was "on trial" although, apparently, he was in the office. This afternoon Todd called Shari. I recognize that this transfer is difficult for Todd, but he was extremely curt with Shari, accused Shari of being rude to his secretary (irrelevant, but ironically ignores his repeated failings to return her calls), and told her that he would deal only with me.

I then called Todd. Todd was extremely curt with me as well, which is not surprising. He again attacked Shari, but I told Todd to stay focused on the transfer issue and that we wanted the files transferred next week. Todd told me that he could not guarantee when we might receive the files. I reminded Todd of his longstanding relationship with the client and that the client had continuing business with him. Rather snidely, he questioned whether I had forgotten that Paul Sutton was a partner at Thelen and that Thelen also has procedures. I told Todd that our firm always attempted to facilitate the transfer of files as quickly as possible. Frankly, there is no excuse for any

DC #130308 v1

QLLC 0069670

THELEN REID & PRIEST LLP

Dr. Stephen Colvin  
Alan Fell, Esq.  
October 11, 2002  
Page 2

delay since Todd was the attorney on the case, knows the files and need only retain the copies he wants to keep. The review should entail no work since he was the attorney on the case. I also asked about Steven's box of documents, which he acknowledged he had, but had no idea as to its location. He then stated he would search for the box when he had time.

I hate to bother you with this tale of woe, but, all in all, Todd is less than cooperative. Hopefully, we will receive the files with no problem.

Cordially yours,



Mark Fox Evens

Enclosure

**THELEN REID & PRIEST LLP**

ATTORNEYS AT LAW

NEW YORK  
WASHINGTON, D.C.  
MORRISTOWN, N.J.

MARKET SQUARE, SUITE 800  
701 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004-2608  
TEL (202) 508-4000 FAX (202) 508-4321  
www.thelenreid.com

SAN FRANCISCO  
LOS ANGELES  
SILICON VALLEY

October 11, 2002

VIA FACSIMILE

Todd S. Sharinn, Esq.  
Greenberg Traurig, LLP  
885 Third Avenue  
New York, NY 10022-4834

Re: Transfer of Files  
*Quickie v. Medtronic*, Southern District of New York  
02 CIV. 1157 (GEL)

Dear Todd:

Pursuant to our telephone conversation this afternoon, I am formally requesting that you transfer all of the litigation files in the above-captioned action to our office in New York as soon as possible. The address is 40 West 57<sup>th</sup> Street. Please send the files to the attention of Shari Markowitz-Savitt, Esq. We also need any files related to negotiations on behalf of Quickie to license its intellectual property. You told me that any such files are contained in the litigation files, but I want to make sure that we have everything.

As we discussed, we would like to accomplish the file transfer as soon as next week as possible. You responded that you must comply with your firm's procedures. I understand that all firms have procedures for the transfer of files. However, recognizing your past relationship with the client and the continuing relationship, I trust that you will ensure an expeditious review so that we will receive all of the files no later than the end of next week. If, for some reason, you are unable to transmit the files, please notify me of any problems as soon as possible so that we can address the problems and obtain the files. I also understand that Dr. Colvin sent you a box of materials that he thought were pertinent. I would like those materials transmitted to our firm as soon as possible as well. Again, given your past relationship with the client, I trust transmittal of these files and documents will not be a problem.

Finally, we are sending over a stipulation to substitute our firm as counsel. Please execute the form and return it by messenger to Ms. Markowitz.

DC #130307 v1

**QLLC 0069672**



THELEN REID & PRIEST LLP

Todd S. Sharinn, Esq.

October 11, 2002

Page 2

If you have any questions, or if I can be of additional service, please do not hesitate to contact me.

Cordially yours,



Mark Fox Evens

cc: Alan Fell, Esq.  
Dr. Stephen Colvin

DC #130307 v1

QLLC 0069673

# **EXHIBIT X**

05/19/2003

10:09

GREENBERG/TRAURIG + 210010200012122632246

NO. 549 003

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Todd S. Sharinn  
212-801-2157  
ts@glaw.com

May 15, 2003

Quickie, LLC  
c/o Rick, Steiner, Segal & Fell  
Three New York Plaza  
New York, New York 10004  
Attn: Alan Fell, Esq.

Re: Quickie, LLC  
Reexamination of U.S. Patent No. 6,066,160 by Medtronic  
Our Ref. 51872.010900

Dear Alan:

We enclose for your information and records, a copy of a Notice Regarding Change of Power of Attorney filed in connection with the above-referenced re-examination application. While we are surprised to have received this document in view of the conversations I had with Dr. Colvin, we respect his decision and will take no further action on this matter.

If we could be of any additional assistance with this matter in the future, please do not hesitate to contact the undersigned. In the interim, kindly note that, it is firm policy that all outstanding fees and expenses incurred in connection with matters be paid upon closing of the same. For your convenience, we will forward our final bills under separate cover.

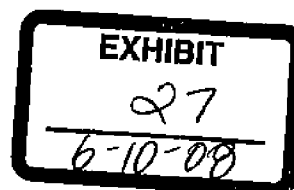
Very truly yours,

Todd S. Sharinn

TSS/ui

Cc: Stephen B. Colvin, M.D.

GREENBERG TRAURIG, LLP  
883 THIRD AVENUE  
NEW YORK, NEW YORK 10022-1034  
212-801-2100 FAX 212-688-2489 www.glaw.com  
NEW YORK ATLANTA BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI ORLANDO PHILADELPHIA PHOENIX  
SAN FRANCISCO WASHINGTON D.C. WEST PALM BEACH WILMINGTON



QLLC 0103020

05/19/2003

10:09

GREENBERG/TRAURIG + 210810200112122632246

NO. 549

004

Page 1 of 1


 Commissioner for Patents  
 Washington, DC 20594  
 www.uspto.gov

APPLICATION NUMBER	FILED DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/198,087	11/23/1998	STEPHEN COLVIN	QUIC-1

CONFIRMATION NO. 2082



\*0000000009757041\*

Todd S. Shalinn  
 Greenburg Traurig LLP  
 885 Third Avenue 21st Floor  
 New York, NY 10022

Date Mailed: 04/02/2003

### NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 04/02/2003.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record (37 CFR 1.33).

DAVID O LIPSCOMB  
 OPR (703) 108-7127

FORMER ATTORNEY/AGENT COPY

QLLC 0103021

# **EXHIBIT Y**

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Todd S. Sharinn  
212-601-2157  
sharinn@gtlaw.com

April 13, 2004

Dr. Stephen B. Colvin  
530 First Avenue - Suite 9V  
New York, New York 10016-0648

Re: US Patent Application Serial No.: 09/660,745  
CONCENTRIC PASSIVE KNOTLESS SUTURE TERMINATOR  
Our Reference: 51822.010200

Dear Steve:

We are pleased to inform you that the above-identified patent application has issued under U.S. Patent No. 6,716,243 B1. We enclose the formal patent deed, together with two soft copies of the patent, for your file. If you note any errors which require correction, please let us know and we will attend to obtaining a Certificate of Correction.

You may now refer to any product covered by this patent as "Covered by U.S. Patent No. 6,716,243 B1" or the like. In this regard, we note that if the benefits of the patent marking statute, 35 U.S.C. 287, are to be preserved, all products which embody the subject invention of the above-noted patent, and which are made, sold or used in or introduced into the United States by or under your authority on or after the date of the patent, should have affixed thereto a notice such as:

U.S. PATENT NO. 6,716,243 B1

If such patent marking is not applied, no damages may be recovered for infringement of the patent claims, except on proof that the infringer was notified of the infringement and continued to infringe thereafter, in which event, damages may be recovered only for infringements occurring after such notice.

Please note that maintenance fees are required to be paid at 3 1/2 years (October 6, 2007), 7 1/2 years (October 6, 2011) and 11 1/2 years (October 6, 2015) after issuance to keep the patent in force. We have docketed these dates and will send you reminders in due course. Please let us know if your address changes so we can ensure that these reminders will reach you.

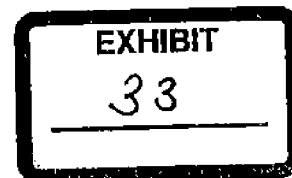
GREENBERG TRAURIG, LLP  
885 THIRD AVENUE

NEW YORK, NEW YORK 10022-4834

212-601-2100 FAX 212-688-2449 www.gtlaw.com

ATLANTA BOCA RATON BOSTON CHICAGO DENVER FORT LAUDERDALE LOS ANGELES MIAMI NEW YORK ORLANDO PHILADELPHIA PHOENIX  
TALLAHASSEE TYSONS CORNER WASHINGTON, D.C. WEST PALM BEACH WILMINGTON


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GT 0000503

Dr. Stephen B. Colvin  
April 13, 2004  
Page 2

Kindly confirm your receipt of these patent documents by signing and dating the enclosed copy of this letter and returning it to the undersigned at the above address. If you have any questions or comments, please do not hesitate to contact us.

Very truly yours,  
  
Todd S. Sharinn

Enclosures

cc: Alan Fell, Esq. (w/o encl.)  
Eugene Grossi (w/o encl.)

RECEIPT ACKNOWLEDGED

\_\_\_\_\_  
DATED: \_\_\_\_\_

GREENBERG TRAURIG, LLP

GT 0000504

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

QUICKIE, LLC,

Plaintiff,

07 Civ. 10331 (RMB) (DFE)

-against-

GREENBERG TRAURIG, LLP, THELEN  
REID BROWN RAYSMAN & STEINER LLP  
(f/k/a THELEN, REID & PRIEST LLP) and  
ROBERT E. KREBS,

ECF CASE

Defendants.

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**EVIDENCE IN SUPPORT OF QUICKIE, LLC'S RESPONSE TO  
GREENBERG TRAURIG, LLP'S MOTION FOR SUMMARY JUDGMENT**

**DIAMOND MCCARTHY LLP**  
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August 26, 2008



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<b>TAB</b>	<b>DESCRIPTION</b>
Evans	Declaration of Mark F. Evens
Fell	Declaration of Alan Fell
Galloway	Declaration of Aubrey C. Galloway
Krebs	Declaration of Robert E. Krebs
A	Letter from M. Evens to A. Fell dated 07/03/01
B	Letter from A. Fell to T. Sharinn dated 10/15/02
C	Letter from M. Evens to T. Sharinn dated 10/11/02
D	Letter from P. Sutton to M. Evens dated 10/15/02
E	Letters from P. Juergensen to S. Markowitz-Savitt dated 10/16/02
F	Change of Correspondence Address and "Fee Address" Indication Form filed by T. Sharinn
G	Revocation of Prior Powers of Attorney and New Power of Attorney for R. Krebs, et al
H	Change of Attorney Docket Number and Change of Address Notice for R. Krebs
I	Letter from M. Evens to S. Colvin dated 02/28/03
J	Declaration and Power of Attorney appointing T. Sharinn
K	Application for Patent
L	Letter from D. Urbanik to A. Fell dated 05/04/01 and from A. Fell to D. Urbanik signed 05/14/01
M	Change of Correspondence Address and "Fee Address" Indication Form filed by T. Sharinn
N	Greenberg Traurig Invoices
O	Email from M. Girard to S. Colvin, et al dated 07/23/06
P	Deposition Transcript of Aubrey Galloway dated 06/12/08
Q	Petition for Reconsideration Under 37 CFR 1.378(e)
R	Complaint
S	Deposition Transcript of Alan Fell dated 06/20/08
T	Deposition of Paul Sutton dated 06/10/08
U	Deposition of Todd Sharinn dated 06/11/08
V	Email from A. Levin to T. Sharinn dated 12/02/02
W	Letter from M. Evens to S. Colvin and A. Fell dated 10/11/02 and letter from M. Evens to T. Sharinn dated 10/11/02
X	Letter from T. Sharinn to Quickie LLC dated 05/15/03 enclosing Notice Regarding Change of Power of Attorney
Y	Letter from T. Sharinn to S. Colvin dated 04/13/04